THE

Laws concerning Game.

Of *Hunting*, *Hawking*, *Fiſhing* and *Fowling*, *&c.* And of Foreſts, Chaſes, Parks, Warrens, Deer, Doves, Dove-cotes, Conies:

And alſo of

Setting-dogs, Grey-hounds, Lurchers, Nets, Tunnels, Lowbels, Guns, and all Manner of Engines and Inſtruments mentioned in the ſeveral Statutes to deſtroy the *Game*; ſhewing who are qualified by Law to keep and uſe them, and the Puniſhments of thoſe who keep them, not being qualified. Likewiſe the proper Seaſons allowed by Act of Parliament for Hunting, Fiſhing and Fowling.

Together with the Foreſt Laws:

Shewing the Method of Chuſing, and Oaths of the reſpective Officers; and the Authority, Power and Duty of *Chief Juſtice in* Eyre, *Clerks of the Peace*, *Conſtables*, *Foreſters*, *Game-keepers*, *Juſtices of Peace*, *Keepers*, *Lords of Manors*, *Parkers*, *Rangers*, *Regarders*, *Sheriffs*, *Stewards of Foreſt Courts*, *Stewards of Leets*, *Verderors*, *Wardens* and *Woodwards*.

By *William Nelſon* of the *Middle-Temple*, Eſq;

To which are now added,

Engliſh Forms of *Convictions*, *Declarations*, *Indictments*, *Juſtifications*, *Licences*, *Mittimus's*, *Pleas*, *Warrants*, &c. Digeſted under proper Titles, in an Alphabetical Order.

The Sixth Edition, with all the Acts of Parliament and Caſes in Print, and alſo a large Collection of Manuſcript Caſes, down to the preſent Time.

LONDON: Printed by *E. Richardſon* and *C. Lintot*, Law-Printers to the King's moſt Excellent Majeſty; for *T. Waller*, oppoſite *Fetter-Lane*, *Fleet-Street*, 1762.

THE

PREFACE.

AS Ignorance of the Law excuſeth no Man *, *therefore it is abſolutely neceſſary for every Perſon to be well acquainted with the* Laws of *ENGLAND* concerning the Game; *for there are ſcarce any Laws of this Kingdom that require to be more univerſally known; all Ranks from the Peer to the Peaſant, not being exempted from Puniſhment for the Breach of them; on which Account the Reviſor of this Edition has endeavoured to ſhew, what is accounted* Game *in the Eye of the Law, their Proceeds and Seaſons of Hunting,* &c.

* Ignorantia juris non excuſat.

what are the proper Receptacles for the Game; *what Officers peculiarly belong to ſuch Receptacles; the Manner of Chooſing or Appointing them, their Oaths and Duties in their reſpective Poſts, and how far their Power and Authority extends; who ſhall be accounted Offenders; to whom it belongs to puniſh ſuch Offenders, and how and in what Manner to proceed againſt and puniſh them, either in the Foreſt-Courts or otherwiſe.*

In this Edition are contained the Forms of Original Writs, Informations, Indictments, Convictions, Declarations, Pleas, Juſtifications, Warrants, Mittimus's, Commiſſions, Deputations, Licences, Notices, and other Precedents and Proceedings, *(relating to the Game in General) more than in the former Editions, and the Statutes (which are the Foundation of ſuch Proceedings)*

ceedings) down to the Preſent Time are immediately referred to before each Precedent, which muſt make this Edition ſtill more uſeful and ſatisfactory to the Reader.

And whereas ſeveral Obſolete *Words are made uſe of in the enſuing Treatiſe, the Reviſor of this Edition has explained them in the following Work, in proper Order, that the Reader may the better underſtand the Foreſt Laws, and the Nature of their Courts. The Statute Law concerning the* Game; *the Caſes, Reſolutions and Judgments in the Aſſiſes, Iters, and Courts of Record at* Weſtminſter, *down to the preſent Time, are here particularly and carefully added; in ſhort, the preſent Laws of the Game are freely and clearly Treated of in this little Tract, and the whole Syſtem divided into ſeveral Titles, in an Alphabetical Order;*

a moſt

The PREFACE.

a moſt approved Method for the ready finding any Thing in a Book, whereby the Reader may at once ſatisfy himſelf in his Inquiry without turning over the voluminous Works in which the Laws of this Nature promiſcuouſly lie diſperſed.

THE

THE INTRODUCTION.

BEFORE I treat of the ſeveral Laws relating to the Game, it may be neceſſary to mention ſomething of the Original and Growth of the grand Receptacles of the Game, which are the *Foreſts* in *Great Britain*.

To begin with the Time of the *Britons*, when their Princes and great Lords had no Occaſion to ſet apart Places for the Preſervation of Game and Beaſts of Venary, (their Bruery, *i. e.* Thickets and uncultivated Lands, being ſuch Nurſeries and Shelter for them), it was the Intereſt of both Princes and Lords rather to deſtroy than preſerve them.

During the Wars between the *Britons* and *Saxons*, ſo many of the *Britons* were killed, and ſo many fled from the conquering *Saxons*, that the cultivated Lands were more than ſufficient to maintain the Conquerors and the miſerable *Britons* who ſtaid amongſt them; for at that Time there were no foreign Markets where the *Saxons* traded with the Produce of their Lands. When the *Saxons* found themſelves Maſters of the *Britiſh* Lands and People, the *Saxon* Captains, as Conquerors, in Common Council agreed to divide the Lands they had taken amongſt themſelves, their Friends and Companions in Conqueſt. The Woods, Waſtes, and Bruery Lands, that were not appropriated to any particular Perſons, remained to the Chief Captain, who in Proceſs of Time aſſumed the Title of King, who, as Occaſion offered, granted Parcels of ſuch Woods to whom he thought fit.

On this Succeſs of the *Saxons* in *Britain*, their hungry half-ſtarved Friends and Relations ſwarmed out of the *German* Hive, to ſuck the ſweets of our Iſland; Multitudes coming over Time after Time, more and more uſeleſs Woods were appropriated and improved; and as Improvements were made, the Cane and Beaſts of Venary retired from thence for Shelter into the unfrequented Woods whither the *Saxon* Kings, that took Delight in Hunting, went for their Diverſion, where was ſuch Plenty of Game, that there was no Occaſion for reſtraining Laws to preſerve them. Theſe Royal unimproved Woods are the Foreſts pointed at by Sir *Edward Coke* in his 4 *Inſt.* 319. who ſays, they are ſo ancient as no Record or Hiſtory doth make any Mention of any of their Beginnings.

Whilſt the ravenous Beaſts of Prey were ſo numerous in the Royal Woods, as to prevent the Increaſe of the Beaſts

of delicious Taſte for the Table, the Kings gave free Liberty to the Nobility and Gentry to hunt in their Woods; but in *Edgar*'s Time, the Breed of ravenous Beaſts being much leſſened, he having an elegant Taſte prohibited Hunting his Deer, and appointed Officers to preſerve all Game of the Table, in his Woods, who ſo rigorouſly put in Execution their Orders, that the Nobility and Gentry were prevented of taking their Diverſions and their Tenants of their reſpective Rights: At length this arbitrary Procedure of the Officers grew to ſo great a Grievance, that Noblemen, Gentlemen and Farmers, made great Complaints for Want of a Law to aſcertain the King's Prerogative and the People's Privilege in this Caſe; on which King *Canute*, through his innate Goodneſs and Juſtice, in a Parliament holden at *Wincheſter* in 1016. brought the Proceedings to a Certainty, that all Men might know what they ſhould, and ſhould not do, by publiſhing Foreſt Laws, therein ſetting out the Bounds of his Foreſts, and limiting

the

the Power of the Foreſt Officers. *Manwood* 401. 80. ſays, they were firſt penned in the *Daniſh* Language: but Lord *Coke* in his 4 *Inſt.* 320. ſays, *Canute* never publiſhed any Law for *England* in the *Daniſh* Tongue, and by the Tranſlation of them it may be fairly conjectured they were originally penned in *Saxon*, from the *Saxon* Words retained, and not by the Tranſlator turned into *Latin*; which ſhews he was neither Maſter of the *Saxon* Language or Character: For Inſtance, he miſtaking ꝑ for a *Roman* P. makes *Pegan*, (and leaves it untranſlated, which is neither *Saxon* nor *Daniſh*,) inſtead of ꝑegen a *Thane*, and *Leſpegend* he puts inſtead of *Leſthegan*, again miſtaking the *Saxon* ꝑ for a *Roman* P, *&c.*

The *Saxon* Kings and the *Daniſh* King *Canute* made no new Foreſts, but were contented with the Woods that were their own Demeſnes, and were never granted to, or poſſeſſed by the Subject; but the Kings of the *Norman* Race, not

being ſatisfied with ſixty-eight old Demeſne Woods or Foreſts, depopulated well-built Towns and Villages, to make to themſelves Places appropriated to their own Diverſion only.

William the Conqueror laid waſte thirty-ſix Towns in *Hampſhire* to make a Foreſt, which ſtill retains the Name of the *New Foreſt*; and his Foreſt Officers, Mr. *Gurdon* ſays in his Hiſtory 113. exerciſed ſuch arbitrary Rule, as to abridge even the great Barons of the Privileges they enjoyed under the *Saxon* and *Daniſh* Kings; not at all regarding the Liberties given to the Subject by *Canute*'s Foreſt Laws.

His Son *William Rufus* is recorded in Hiſtory for the Severity of his Proceedings againſt all that hunted in his Foreſts; inflicting the Puniſhment of Death upon ſuch as killed a Stag or Buck in his Foreſts, without any other Law than that of his own Will.

Henry

Henry I. and *Richard* I. were as arbitrary in this Caſe, as their Predeceſſors, [following their Precedents] in puniſhing Nobility and Gentry who hunted in the Royal Foreſts, which was with the greateſt Severity, *viz.* with the Loſs of *Eyes and Teſticles*, other Offences fineable at the Will of the King; ſome were never to be pardoned, and no Perſon whatſoever was exempted from appearing at the Court of Juſtice-Seat, upon a Summons of the Chief Juſtice in *Eyre*; by which the People were grievouſly oppreſſed by thoſe perſonal Services they were bound to perform at thoſe Courts in the Foreſt.

In the Reign of King *John*, theſe and other Oppreſſions, having exaſperated the Barons, they took up Arms, and choſe *Robert Fitz-Walter* their General, and marched to *Northampton*, and by the Way of *Bedford* to *London*; from whence they ſent Letters to the Earls, Barons and Knights

that adhered to the King, that if they would not desert the perjured King, and join with them in asserting their Liberties, they would proceed against them as publick Enemies.

These Threats drew from the King most of the Barons that had adhered to him, which Defection left the King hopeless, and induced him to send *William* Earl of *Pembroke* and other faithful Messengers to let the confederated Barons know he would grant them the Laws and Liberties they desired: Upon which a Meeting of King and Barons was agreed to be on the fifteenth of *June* 1215, at *Running Mead*, between *Stains* and *Windsor*, where a conference began between the Barons that adhered to the King and the confederated Barons, who were so superior in Number to the King's Barons, that he seemed to make no Difficulty of granting the Laws and Liberties demanded; which were drawn up as the confederated Lords thought fit, in two Charters, *viz.* The Great Charter,

and

and the Charter of the Liberties and Cuſtoms of the Foreſt.

Henry III. in 1225, in the ninth Year of his Reign confirmed the Charter of Liberties and of the Foreſt under his Seal, and ſent one into each County of *England:* And this Charter was witneſſed by thirty-one Biſhops and Abbots, and by thirty-three Lay Barons; in his fourth Parliament alſo Archbiſhop *Boniface* denounced a Curſe in *Weſtminſter-Hall*, in the Preſence of the King and ſeveral Biſhops and Noblemen, againſt thoſe who ſhould break this Charter; and to add to the Solemnity, the Biſhops were apparelled in their *Pontificalibus*, and each held a lighted Taper in his Hand; and the Archbiſhop denounced the Excommunication in the following Words, *viz.* "By the Authority of God the Father, the "Son and the Holy Ghoſt, and of the Glo-"rious Mother of God and perpetual Vir-"gin *Mary*, and of the Bleſſed Apoſtles "*Peter* and *Paul*, and of all the Apoſtles "and Martyrs, of Bleſſed *Edward* King "of *England*, and of all the Saints of Hea-

"ven,

" ven, we excommunicate, accurſe and
" from the Benefit of our Holy Mother the
" Church we ſequeſter all thoſe, who hereaf-
" ter ſhall violate, break, diminiſh or change
" the free Cuſtoms and Liberties granted
" in the *Charter of the Foreſt*, by our Lord
" the King, to the Prelates, Earls, Barons,
" Knights, and other Freeholders of the
" Realm, and all who ſecretly or openly by
" Deed, Word or Counſel ſhall bring in
" Cuſtoms, and keep them when brought
" in againſt the ſaid Liberties, or any of
" them, and all thoſe who ſhall preſume to
" judge againſt them; all and every which
" Perſons, that ſhall willingly commit any
" of the Premiſſes, let them know that
" they incur the aforeſaid Sentence *ipſo*
" *facto*, and thoſe who commit them igno-
" rantly ought to be admoniſhed, and ex-
" cept they reform themſelves within fifteen
" Days after ſuch Admonition, and make
" full Satisfaction for what they have done
" *at the Will of the Ordinary*, ſhall be
" from thenceforth wrapped in the ſaid
" Sentence, to the perpetual Memorial of

" which

" which Thing we the aforesaid Prelates " have put our Seals to these Presents." Thus the grievous Oppressions, which the Subjects of *England* then laboured under, were remedied by this Charter, which the Reader will see under proper Heads in the following TREATISE.

THE

THE LAWS of ENGLAND

Concerning the

Game, &c.

Action, of Debt, *&c.* for *Pecuniary Penalties* inflicted by the Game-Acts, may be brought in any Court of Record, by Stat. 8 *Geo.* 1. See Title **Game.**

Action for killing of Game; upon Not Guilty, and Verdict for the Defendant, a new Trial was prayed, on Pretence that it was a Verdict againſt Evidence; for which the Plaintiff referred himſelf to the Notes of the Judge who tried the Cauſe. *Cur.* New Trials are not grantable in penal Actions. *Eaſter* 4 *Geo.* 2. *Seymour*, *Qui tam*, and *Day*, *M. S. Rep.*

Agiſt, Is derived from the *French* Word *Giſte*, *i. e.* a Bed or reſting Place; whence to *Agiſt*, ſignifies to take in and feed the Cattle of Strangers in the King's Foreſt.

The King's Demeſne Woods and Lands muſt always be *agiſted* by his Foreſters, Verderors and Agiſtors. *Manwood* 3, 4.

Every Freeman by *Chart. Foreſtæ*, *Ar.* 9. may *agiſt* his own Wood within the King's Foreſt, at ſeaſonable Times; the Words of the Act are 'at his Pleaſure', ſee **Swainmote**; but not with Goats or Sheep without Licence. *Quia præbent exilium ferarum Foreſtæ*, that is, *they ſo taint the Paſture where they feed, that the Beaſts of the Foreſt will not depaſture there; ſo that they do as it were baniſh them from every Place where they are:* but he may drive his Swine through the Demeſne Woods for to *agiſt* them in his own; if the Swine lie one Night within the Foreſt, no Treſpaſs; the *Agiſt* of Swine is for the Pannage.

If a Man who dwelleth within the Foreſt, and hath common in the Waſte, will take the Beaſts of Strangers to *agiſt*, this is an Offence fineable to the King. *Manwood* 6.

Agiſtment, Signifies the Herbage of Lands or Woods, or the Money received, or due for the ſame, and is of two Sorts, *i. e.* of the Herbage of Woods, Lands, and Paſtures; and of Woods alone, *viz.* of the Maſts of Trees, properly called Pannage. *Manwood* 2.

Agiſtment is only for ſuch Beaſts as are Commonable, *Manwood* 3. but not for Geeſe, Goats or Sheep.

Agiſtments muſt be inrolled in the Verderor's Roll, which Roll muſt agree with the Agiſtor's Account. *Ibid.* 4.

The

The Time of taking in *Agiſtments* of all Manner of commonable Beaſts, in the King's Demeſne Woods and Lands, for Herbage only, doth begin fifteen Days before *Midſummer*, and ends on *Holy-Rood-Day*, 14th *September*; for Swine and Hogs to feed on the Maſt, it begins on *Holy-Rood-Day*, and ends on the Feaſt of St. *Martin*. *Ibid.* 7, 8. See the Table.

Agiſtor, Is an Officer that takes Beaſts to depaſture within the Foreſt, and the Cattle which feed there are Levant and Couchant. He is conſtituted by Letters Patent, and in Foreſts where there is any Pannage (for where there are no Woods there are no *Agiſtors*) there be four in Number. 4 *Inſt.* 293.

He is to preſent Treſpaſſes done by Cattle, *Manwood* 11.

The *Agiſtors* alone are to receive the Money for Agiſtments and Pannage. *Manwood* 5.

Every *Agiſtor* in the King's Foreſt muſt bring before the Lord Chief Juſtice in Eyre of the Foreſt at the Juſtice-Seat, a true and juſt Account of what Money he hath received for any Agiſtment or Pannage *(a)* of the King's Woods and Lands. *Ibid.* 4. and likewiſe the Profit of Ruſhes, Fern, Gorſe, Sedge, *&c.* *Itin. Lanc. fol.* 8. *Manwood* 232.

If *Agiſtors* fail of their Rolls and Accounts, they ſhall be amerced and diſtrained by their Lands to bring in the ſame. *Ibid.* 333.

If he preſent any Thing which doth not belong to his Charge, the Preſentment is void.

(*a*) The Time of Pannage begins on *Holy-Rood-Day*, and ends 40 Days after *Michaelmas*. *Manwood* 228, 230.

Ibid. 11. And therefore one *Finch* was fined 10*l.* at the Juſtice-Seat for the Foreſt of *Windſor*, for making the *Agiſtors* preſent Things which did not belong to them. *W. Jones* 280. See *Table*

Amerciament. See **Diſtreſs, Reeve.**

Appearance at the Chief Juſtice Seat. Thoſe under the Age of Twelve, thoſe that are Sick or Blind, ſeventy Years of Age or upwards, thoſe employed in the Service of the King in any other Place, Archbiſhops, Biſhops, Earls and Barons, though they have Lands within the Foreſt, are not compellable to *appear* at the Time when the General Summons is made. *Manwood* 14.

But Archbiſhops, Biſhops, Earls, and other Noblemen, who claim any Liberties, Freedoms or Privileges within the Foreſt, muſt *appear* upon ſuch General Summons to claim the ſame: Otherwiſe ſuch Privileges, *&c.* will be ſeized into the King's Hands for Nonclaimer; but they need not *appear* in Perſon, but by Attorney. *Ibid.* *Vide* Table.

Apprentices. By Stat. 4 *&* 5 *W. & M. c.* 23. 'If any inferior Tradeſman, *Apprentice*, or other diſſolute Perſon, neglecting his 'Trade and Employment, ſhall preſume to 'hunt, hawk, fiſh or fowl [unleſs in Company with the Maſter of ſuch *Apprentice*, 'qualified by Law] ſhall be carried before a 'Juſtice of Peace, and being convicted before 'him upon Oath, ſhall forfeit not exceeding '20*s.* nor under 5*s.* to be aſcertained by the 'Juſtice, one Moiety to the Informer, and the 'other

'other to the Poor, *&c.* to be levied by Di-'ſtreſs and Sale, and for want of Diſtreſs, ſhall 'be committed to the Houſe of Correction not 'exceeding one Month, nor under Ten Days, 'there to be whipped and kept to hard Labour, 'and *may be ſued and proſecuted for wilful Treſ-'paſs in coming on other Perſon's Land; and if 'found guilty, the Plaintiff ſhall not only recover 'Damages, but his full Coſts of Suit.*'

Law Caſes.

It was held, that *Conviction* on the Stat. 4. *&* 5 *W. & M. c.* 23. ſhewing the Defendant *exiſtens perſona diſſoluta, &c.* did hunt and kill ſo many Hares, *&c.* ought to be quaſhed, becauſe it did not ſhew he was not qualified. 2 *Mod. Caſes* 40.

Note; The Stat. 4 *&* 5 *W. & M. c.* 23. makes an inferior Tradeſman liable to *full Coſts* for hunting in another's Ground, notwithſtanding his being *qualified* by an Eſtate. 1 Ld *Raym.* 150. (*Vide* S. C. Tit. *Hunting.* p. .) Even tho' the *Jury give Damages under* 40 s. for this Statute, as to this Point of *inferior Tradeſmen, repeals* the Stat. of 22 *&* 23 *Car.* 2. *c.* 9. which gives no more Coſts than Damages, when the Jury give Damages under 40 *s.*

A. was convicted upon the Stat. of 4 *&* 5 *W. & M. c.* 23. for deſtroying of Game, not being a Perſon duly qualified. *A.* took ſeveral Exceptions to the Conviction; 1*ſt*, That the Information which was ſet forth in the Convic-

tion was insufficient to warrant the Conviction, for the Information only recited, that he was an *inferior Tradesman*, but did not shew that he had wasted his Substance, or that he was a dissolute Person, which are the Words of the Statute; and therefore it did not appear by this Conviction, that *A.* was such a Person as was intended by the Statute, for he might be an inferior Tradesman, and yet have a sufficient Estate to qualify him to hunt, *&c.* 2*dly*, That it was not set forth in the Conviction, that the Defendant did unlawfully hunt; and for any Thing which appears in this Conviction, the Defendant might have bought the Hare, and have hunted it and killed it in his own Yard, which would have been lawful. 3*dly*, That this Conviction set forth, that Information was given to such an one Justice of Peace, but did not say *ad tunc* a Justice of Peace, and he might be a Justice at the Time of the Conviction, and not at the Time of the Information. But the Court over-ruled all the Exceptions, and to the 1st they said, That the Statute was in the *Disjunctive*, viz. *Inferior Tradesman, or other dissolute Person*; and therefore that if the Defendant was either, was sufficient. To the 2d they said, That the Statute forbids such Persons as the Defendant to hunt at all, and made it criminal for such Persons to hunt generally; and in this Statute there is no Distinction betwixt lawful and unlawful Hunting, as there is in the Statute against Deer Stealers; and agreed, that in a Conviction for Deer Stealing it must be set forth, that the Defendant did unlawfully hunt,

but

but in the preſent Caſe it need not, becauſe there is no ſuch Diſtinction in the Act. To the 3d Exception they ſaid, That the Conviction ſet forth, that Information was made to ſuch an one *being a Juſtice, &c.* which muſt be intended that he was one at that Time, and was ſufficient without ſaying *ad tunc*, and ſo all the Exceptions being over-ruled, the Conviction was affirmed. *Trin.* 12 *Geo.* 1. *in B. R. Rex* v. *Chipp. M. S. Rep.* 1 *Str.* 711. *S. C.* accordingly.

Archbiſhop. See **Appearance.**

Arrentation, Is the Licenſing an Owner of Lands in the Foreſt, to incloſe them with a Hedge and a little Ditch under a yearly Rent.

Aſſart. The Etymologiſts are not agreed in the Derivation of this Word, but they all agree in the Signification of it; which is to grub up or clear a Ground of Buſhes, Shrubs, *&c.* and make it plain and fit for Tillage. And by *Manwood, p.* 20. it is the Deſtroying of Coverts in Foreſt; and the Difference between a Waſte of the Foreſt and an *Aſſart* is this; a Waſte is the Felling or Cutting down any Covert of the Foreſt without Licence, but an *Aſſart* is the Deſtroying a Covert and Converting it into plain or arable Land.

There is a Difference between *aſſarting* the King's Woods and Lands, and thoſe of other Men; for he who is found *aſſarting* the King's Land, is to be committed for the firſt Offence without Bail, (except delivered by the Chief Juſtice in Eyre or his Deputy) till he hath paid a Fine to the King; but the Lands of a com-

mon Perſon in the Regard of the Foreſt, is bailable for the firſt and ſecond Offences, but not for the third: for in ſuch Caſe his Body ſhall be impriſoned until he hath paid a Fine to the King, unleſs the Chief Juſtice in Eyre will bail him as aforeſaid; and in both Caſes the Fine is arbitrary. *Manwood* 21, 22, 23. See *Table.*

Attachiamenta *de Spinis & Boſco.* A Privilege granted to the Officers of a Foreſt, to take to their own Uſe, Thorns, Bruſh and Windfall, within their own Precincts or Liberties.

Attachment. The Court of the *Attachments*, or the *Woodmote* Court, is one of the three Courts of the Foreſt, and is to be kept before the Verderors every forty Days throughout the Year, and therefore is called the Forty Day Court. At this Court the Foreſters bring in the Attachments of Vert and Veniſon, the Preſentment thereof, and the Verderors do receive the ſame, and inroll them, but this Court can only Inquire, and not Convict: But it is to be obſerved, that no Man ought to be attached by his Body for Vert or Veniſon, unleſs he be taken in the very Fact within the Foreſt, otherwiſe the *Attachment* muſt be by his Goods. 4 *Inſt.* 289. *Manwood* 23 *to* 32.

Badger. See **Fox.**

Bail. Treſpaſſer in a Foreſt committed to Priſon may be *bailed* upon giving ſufficient Sureties to appear at the next Eyre; if ſuch *Bail* is refuſed, he may in Term-Time move he Court of King's Bench for an *Habeas Corpus*,

pus, which will be granted, or he may move the Court of Common Pleas or Exchequer (if privileged) or the Court of Chancery, either in or out of Term, and upon this Writ he may be *bailed* to appear at the next Eyre to be holden for the Foreſt. *Manwood* 34.

A Foreſter may detain a Man till he gets *Bail*. *Ibid.* 35. See *Table*.

Bailiff. *(Ballivus)* See **Conſtable.**

Barons. See **Appearance.**

Bedel, Is derived from a *Saxon* Word, ſignifying *to call or warn*, and is an Officer of the Foreſt, that doth warn all the Courts of the Foreſt, executes the Proceſs of the Foreſt, and makes all Proclamations as well within the Courts, as without. 4 *Inſt.* 313. *Manwood* 36.

Biſhop. See **Appearance.**

Boar, Is a Beaſt of the Foreſt, and is called the 1ſt Year a *Pig of the Sounder*, 2d, A *Hog*, 3d, A *Hog's Steer*, 4th, A *Boar*, and after a *Sanglier*; and in Seaſon from *Chriſtmas* till *Candlemas*. 4 *Inſt.* 316.

Boundary, Foreſts muſt be meered and bounded with Marks, Meers and *Boundaries*, which are Rivers, Highways, Hills, Churches, and ſuch like; and for want of ſuch *Boundaries*, great and remarkable Trees have been uſed for the ſame. And they are either known by Matter of Record, or by Preſcription; and though a Foreſt doth lie open, and not incloſed with Hedge, Ditch, Pale or Wall, yet in the Eye of the Law it hath as ſtrong an Incloſure by theſe Marks, Meers, and *Boundaries*, as if it were incloſed with a Wall. *Manwood* 37.

By Stat. 17 *Car* 1. *c.* 16. 'The Metes, 'Limits, Meers and *Boundaries* of all Foreſts 'ſhall be taken, adjudged and deemed to ex-'tend no farther than they were commonly re-'puted, known, *&c.* in the 20th of King '*James*.'

It is abſolutely neceſſary that every Officer of the Pariſh ſhould know the *Boundaries*, *&c.* For though by Stat. 21 *Ed.* 1. 'A Foreſter, '*&c.* ſhall not be queſtioned for killing a 'Treſpaſſer who will not yield himſelf; yet 'in this Caſe the Limits of the Foreſt are 'iſſuable, becauſe the killing of the Offender 'within the Limits or without, makes it Fe-'lony, or not. And alſo if a Man be pre-'ſented for killing a Beaſt of the Foreſt, if 'it was killed out of the Limits thereof, it 'may be no Offence againſt the Foreſt Laws.' *Manwood* 40.

Bow-Bearer, An under Officer of the Foreſt, who is to make Inquiſition of Treſpaſſes done, either to Vert or Veniſon, and preſent the Offenders the next Court of Attachment.

Browſe, Are young Sprouts of Trees that ſhoot out early in the Spring.

Buck, Is the firſt Beaſt of Chaſe, and is called the firſt Year a *Fawn*, ſecond a *Pricket*, third a *Sorel*, fourth *Sore*, fifth a *Buck of the Head*, ſixth a *Buck*. The Seaſon begins at *Midſummer*, and ends at *Holy-Rood-Day*, *viz.* fourteenth of *September*.

An Indictment for chaſing a *Buck* in the King's Foreſt with Wares.

Eſſex, *to wit.* *THE Jury for our Sovereign Lord the King upon their Oath preſent, That* B. T. *late of* G. *in the County of* E. *Gentleman, the* 30*th Day of* October *in the ſeventh Year of the Reign,* &c. *the Foreſt of our ſaid Lord the King, of* E. *in the ſaid County of* E. *broke and entered, and one* Buck *to the Value of* 20 s. *then and there found, without Licence and Conſent of the ſaid Lord the King, with Grey-hounds hunted and chaſed, and the ſaid* Buck *at* S. *within the Precincts of the Foreſt aforeſaid, with Wares did hang and kill, and that* Buck *ſo hanged and killed unjuſtly took, and carried away, againſt the Peace of our Sovereign Lord the now King, his Crown and Dignity.*

A Warrant for a *Buck.*

To the Keeper of, *&c.*

UPON Sight hereof, you are to kill and deliver to R. C. *Eſq; one fat* Buck *of this Seaſon, for which this ſhall be your Warrant.*

Dated, *&c.* R. P.

Buckſtalls, Are Toils to take Deer.

Certiorari. 'No *Certiorari* ſhall be allowed to remove any Conviction, or other Proceedings upon the *Stat.* 3 *&* 4 *W. & M.*

'c. 10. unleſs the Party, before the Allowance 'thereof, be bound to the Proſecutor in 50 *l.* 'with ſuch Sureties as the Juſtice ſhall 'think fit, to pay in a Month after the Con-'viction confirmed, or *Procedendo* granted, full 'Coſts and Damages to be aſcertained upon his 'Oath, and at the ſame time become alſo bound 'to the Juſtice before whom ſuch Conviction 'ſhall be made, with ſuch Sureties as the Juſ-'tice ſhall approve of, in the Penalty of 60 *l.* 'for each Offence, with Condition to proſecute 'the *Certiorari* with Effect, and to pay ſuch 'Juſtice the Forfeitures due by the Conviction, 'to be diſtributed as the ſaid Statute directs; or 'to render to the Juſtice the Perſon convicted 'within one Month after the Conviction ſhall 'be confirmed, or a *Procedendo* granted. And 'in Default thereof, the Juſtice and all other 'Perſons whatſoever may proceed to execute 'ſuch Conviction.' *Stat.* 3 & 4 *W.* & *M.* *c.* 10. *ſ.* 6. 5 *Geo.* 1. *c.* 15. *ſ.* 1.

'And after delivering to the Juſtice the Rule 'by which the Conviction ſhall be confirmed, 'he may proceed, as if a *Procedendo* had been 'granted.' *Stat.* 5 *Geo.* 1. *c.* 15. *ſ.* 2. See the Caſe of the King *v.* Whitlock, p. Tit. **Deer.**

'*Certiorari* to remove a *Conviction* or other 'Proceedings before any Juſtice of the Peace, 'or General or Quarter Seſſions, to be applied 'for within Six Calendar Months, and upon 'Six Days Notice (upon Oath) to the Juſtice or 'Juſtices, to the End that the Juſtices or the 'Parties concerned may ſhew Cauſe if they ſo

'think

'think fit, againſt the Iſſuing of the *Certiorari.*' *Stat.* 13 *G.* 2. *c.* 18. *ſ.* 5.

'No Judgment or Order to be removed by '*Certiorari* without Sureties found.' *Stat.* 5 *G.* 2. *c.* 19. *ſ.* 2.

Law Caſes.

Adjudged that a *Certiorari* ſhall not be allowed to remove a Preſentment by any Foreſter, for ſelling Wood, before Conviction at the Swainmote; for if it ſhould, then the Courts of the Foreſt would be deprived of their Juriſdiction. *The King* againſt *Maxis*, 2 *Keb.* 81. *Sid.* 296.

The Defendant was convicted for ſtealing Deer, and by Virtue of a Warrant, *&c.* a Diſtreſs was taken for the Forfeiture, and a *Certiorari* was afterwards brought to remove the Conviction into the King's Bench, and after *the Record was removed, the Conſtable ſold the Goods which he had ſeized, and kept the Money*, and would not return the Warrant, *&c.* And it was held, that the Conſtable might proceed in the Execution of the Warrant after the *Certiorari* was allowed, becauſe it was begun before; and that the Writ was no more a *Superſedeas*, than a Writ of Error was to ſtay an Execution upon a *Fieri Facias already begun*; and that the Court had no Power over this Warrant, becauſe it was granted before the *Certiorari* iſſued; therefore they would make no Rule on the Conſtable to return the Warrant, but ſaid the Juſtices might fine him if he did not return, or pay the

Money

Money to the Proſecutor. *The Queen* againſt *Naſh*, 1 *Salk.* 147. See *Law Caſes*, Tit. **Deer.**

If a Motion be made for an Information againſt a Juſtice of Peace for an illegal Conviction, the Conviction muſt be returned by *Certiorari* into the King's Bench. *The King* ver. *Heber*, by whom *A.* was convicted *without Summons* for killing the Game.

Chaſe, (from *Chaſſer*, to chaſe), is a privileged Place for the Receipt of Deer, and Beaſts of the Foreſt, and is of a middle Nature betwixt a Foreſt and a Park. It is commonly leſs than a Foreſt, and not endowed with ſo many Liberties, as Officers, Laws, Courts, *&c.* and yet is of a larger Compaſs than a Park, having more Officers, *i. e.* Keepers, Woodwards and Game, than a Park. Every Foreſt is a *Chaſe*, but every *Chaſe* is not a Foreſt. It differs from a Park in that it is not incloſed; for if it is incloſed it is a good Cauſe of Forfeiture, though it muſt have certain Metes and Bounds. But it may be in other Men's Grounds as well as in one's own. It is not lawful to make a *Chaſe*, Park or Warren, without Licence under the Broad Seal. *Wood's Inſt.* 207. *Manw.* 49.

A *Chaſe* is governed by the common Law, and ſuch as were never Foreſts cannot have any Purlieu. 4 *Inſt.* 314, 303.

The Beaſts of the *Chaſe* are the *Buck*, *Doe*, *Fox*, and formerly the *Martern* and the *Roe*, which are not now in *England*. *Manw.* 50.

The Beaſts of the *Chaſe* frequent the Fields, Hills and Mountains in the Day-time, and the Vallies,

Vallies, Corn-fields and Meadows in the Night, *Ibid.* 51. and are called *Campeſtres*, becauſe they frequent the Fields more than the Woods.

If a Man hath a *Chaſe* adjoining to a Foreſt, if he deny the Keepers of the Foreſt to fetch back the hunted Stag, this is fineable; but Red Deer may be in a *Chaſe* by ſpecial Claim. *Ibid.*

A Grant may be made to one to *have a Chaſe in a Foreſt*; but yet in ſuch Caſe the Grantee ought not to hunt or kill any Stag or Red Deer, or other Beaſt of the Foreſt, if he doth, 'tis an Offence, and fineable. *W. Jones* 278.

Where a Man hath a Freehold in a free *Chaſe*, he may cut down Timber without View or Licence of any Perſon; which he cannot do in a Foreſt: but if he cut ſuch a Quantity, that there is not enough for *Covert*, and to maintain the Game, he ſhall be puniſhed at the King's Suit; ſo if he hath a *Chaſe* in another Man's Soil, the Owner cannot deſtroy all the *Covert*, but muſt leave ſufficient for the Deer to browſe. 12 *Rep.* 22. *W. Jones* 276. S. P. 2 *Cro.* 155. S. P. 4 *Inſt.* 298. S. P.

The Owner of the Soil in a *Chaſe* may have Common for Sheep, and feeding for his Conies there, either by Grant or Preſcription; but he muſt not ſurcharge it with more than hath been uſual, neither can he make any new Coney-Burrows. 12 *Rep.* 22. 2 *Cro.* 22.

Chief Juſtice in Eyre, Is an Officer of great Honour and Authority, and is a Peer, and always of the Privy Council. In former Days this great Officer was created by Writ, as other *Juſtices in Eyre* are, but now by the Stat. of

of the 27 *H.* 8. *c.* 24. he is made by Letters Patent under the Great Seal. As his Office is * Judicial, it was doubted whether he could lawfully make Deputies; therefore to avoid ſuch Ambiguity and Doubt, the Stat. of the 32 *H.* 8. *c.* 35. was made, whereby it is enacted, 'That every Juſtice of the King's Foreſts, Parks and Chaſes, may by Writing under the Hand and Seal of his Office, depute as many Deputies as he pleaſes, which ſhall have the ſame Power and Authority as if he was perſonally preſent.'

The *Chief Juſtice in Eyre* (according to my Lord *Coke*) is commonly a Man of greater Dignity than Knowlege in the Laws of the Foreſt, and therefore where Juſtice-Seats (the Court of the *Chief Juſtice in Eyre*) are to be held, ſome other Perſons by the King's Appointment are aſſociated to him, who together are to determine all Pleas of the Foreſt, and the *Chief Juſtice in Eyre*, and thoſe aſſociated, are the Chief Juſtices of the Foreſt, ſo called in Reſpect of the Verderors and others, who, to ſome Purpoſes, have judicial Places. 4 *Inſt.* 314.

There are two *Chief Juſtices in* † *Eyre*; one for the Foreſt on this ſide *Trent*, the other beyond. *Manwood* 57. See **Juſtice-Seat.**

Chiminage, Is a Toll for Paſſage thro' a Foreſt due by Cuſtom.

* By the Common Law a judicial Officer cannot make a Deputy.

† In *Latin Iter*; and the *Eyre* of the Foreſt is the Juſtice-Seat.

By

By * *Chart. de Foreſta, c.* 14. No *Chiminage* ſhall be taken in Foreſts, but by Foreſters in Fee, that farm their Bailiwick, and only of ſuch as buy their Buſhes, Timber, Bark or Coal, to ſell it again, *viz.* 2 *d.* for a Cart, and 1 *d.* for a Horſe, to be taken half-yearly; and it ſhall be only taken where it hath uſed to be taken, and not elſewhere; neither ſhall any *Chiminage* be taken of ſuch as carry Burthens of Buſhes, Bark or Coal, albeit they ſell it, unleſs they take them out of the King's Demeſne Woods.

Claims in Foreſts. Thoſe who *claim* ought to make it on the firſt Day of the Juſtice-Seat, either in Perſon or by Attorney, otherwiſe their *Claim* ſhall not be received without paying a Fine; for if it is once put in, and afterwards it ſhould appear to be faulty, it is not to be amended without a Fine, or if put in and not proſecuted to an Allowance, Judgment ſhall be entered againſt them for Default of Proſecution. 4 *Inſt.* 297. *Manwood* 80. *W. Jones*'s *Rep.* 297.

If a Man makes his *Claim* by Grant or Preſcription, and he and his Counſel miſtake his right Title in ſome material Point, ſo as the *Claim* is found againſt him, it is good for him that his true Title be found by the ſame Verdict ſpecially, for then he may by Petition make a Fine and pray Licence to make a new *Claim*,

* This Charter was made at *Weſtminſter* 10 *February* 9 *H.* 3. *Anno Dom.* 1224. (and confirmed 28 *Ed.* 1. *Anno Dom.* 1299.) 208 Years after the Charter of *Canutus* the *Dane*.

and

and thereunto he ought to be admitted. 4 *Inſt.* 297.

In Trial of *Claims*, 'tis to be obſerved, if a Man claim to be a Foreſter in Fee, either by Preſcription, Grant or Tenure, and prayeth, that it may be inquired by Miniſters of the Foreſt, in this Caſe the Verderors, Regarders and Agiſtors ſhall try the Title; but if a Man *Claim* by Inheritance, or otherwiſe, any Profits Apprender, as Common of Eſtovers or Paſture, in this Caſe the Trial ſhall be by the Foreſters, Verderors, Regarders, and not by Agiſtors. *Manwood* 80.

If a Man makes a *Falſe-claim* by *claiming* more than he ought, he ſhall be fined for his *Falſe-claim*, but that which he ought to have ſhall not be ſeized. 4 *Inſt.* 297. See *Appearance.*

Common. By *Chart. de Foreſta*, *Art.* 1. 'Where the King hath afforeſted his own 'Woods or Lands, the ſame ſhall remain a 'Foreſt, ſaving Common of Herbage and 'other Things within the Foreſt, to ſuch as 'have been accuſtomed to enjoy them.'

By *Ord. Foreſtæ*, *Art.* 1. 'Thoſe to whom 'the King hath granted Purlieus (whereby 'their Woods are diſafforeſted) ſhall be quit 'of the Charge of the Foreſt, but then they 'are to have no *Common* within the Foreſt. 'Howbeit, ſuch as are willing to return their 'Woods into the Foreſt, ſhall enjoy *Common* and 'other Eaſements there, as they did before.'

A Man may claim *Common Appurtenant* in a Foreſt by Preſcription for all Manner of Beaſts which

which are *commonable* in a Foreſt; ſo likewiſe he may preſcribe to have *Common by Reaſon of Vicinage*, or *Common Appendant*; a Man may alſo have *Common in Groſs*; and he who hath ſuch a *Common*, may uſe and enjoy it there according to the Purport of his Grant; for this Sort of *Common* is by Deed only, and not by Preſcription; but all the other three Sorts of *Commons* are by Preſcription only, without Deed. And no other Title can a Man have to a *Common* in a Foreſt. *Manwood* 89, 90, 91, 92, 93.

In the Caſe of *Grammer* againſt *Watſon*, a ſpecial Verdict was found, That *Alamore* Waſte was in the Foreſt of *Sherwood*; and that the Meſſuage and 30 Acres of Land, for which the Defendant preſcribed to have *Common*, was within the Purlieus of the ſaid Foreſt; and they found the Defendant had Right of *Common* there, *&c.* but whether ſuch a *Preſcription to have* Common *in a Foreſt* was good or not, they left to the Judgment of the Court. In arguing this ſpecial Verdict, the Counſel for the Plaintiff objected, that the Preſcription alledged in Bar was ill; it being *to have* Common *in a Foreſt* abſolutely, without excepting the *Fence-month*, and alſo for *Sheep* which are not *Commonable* in a Foreſt, becauſe they bite ſo near, that the Deer may be ſtarved: But theſe Objections were not allowed, becauſe there are Authorities in Point, that a Man may *preſcribe for* Common *for Sheep in a Foreſt*, viz. 2 *Cro.* 155. *W. Jones* 285. and likewiſe without excepting the *Fence-month*. 3 *Lev.* 98. *Trigg* and *Turner*'s Caſe.

And

And the Defendant had Judgment. *Compleat Engliſh Copyholder*, Tit. *Alamore.*

All the Inhabitants in *Egham* Foreſt joined to have Claim for all Cattle *commonable*. *Per Cur.* They ought not to have joined in one Claim; it is true, Tenants in Ancient Demeſne may join in a Claim for *Common*, &c. becauſe the King cannot claim for them; but other Men, if Copyholders, they muſt only join who are Tenants to one Lord, and the Lord muſt preſcribe for him and his Tenants. *W. Jones Rep.* 276, 286. See *Staff-herding*.

Preſcription to have *Common* is good, without an Allowance in Eyre, becauſe it is an equitable Preſcription, and in Nature of a *Common* Right; for ſince the Deer have fed on my Grounds, it is reaſonable I ſhould have *Common* in the Foreſt.

Note; A Foreſt may be diſafforeſted and laid open, but Right of *Common* ſhall remain. *Poph.* 93.

Coney, Is a Beaſt of Warren, and is called the firſt Year a *Rabbet*, and afterwards an old *Coney*.

By Stat. 3 *J.* 1. *c.* 13. *ſ.* 2. 'If any Perſon 'ſhall in the Night-time enter into any Grounds 'incloſed, and uſed for keeping of *Conies*, and 'hunt, drive out, take or kill any *Conies*; 'he ſhall, on Conviction at the Suit of the 'King or the Party, at the Aſſizes or Seſſions, 'on Indictment, Bill, Information, or otherwiſe, forfeit 10 *l.* to the Party grieved, or 'treble Damages and Coſts at the Election of 'the Party; and find Sureties for his good

'Abearing

'Abearing for Seven Years, or continue in Priſon till he does.

'But this ſhall not extend to any Grounds to be *incloſed* and uſed for *Conies* after the making of this Act, without the King's Licence.' Same Statute *ſ.* 7.

By Stat. 22 & 23 *Car.* 2. *c.* 25. *ſ.* 4 *: If any Perſon ſhall at any time enter wrongfully into any Warren or Ground kept for breeding *Conies*, whether incloſed or not, and chaſe, take or kill any *Conies* againſt the Owner's Will, and ſhall be thereof convicted, in one Month after the Offence before one Juſtice, by Confeſſion or Oath of one Witneſs, he ſhall render to the Party grieved treble Damages and Coſts, and be impriſoned three Months, and after till he find Sureties for his good Abearing.

'Perſons that kill or take in the Night-time *Conies* upon the Borders of Warrens †, or on other Grounds lawfully uſed for keeping of *Conies*, (except the Owners or Poſſeſſors of the Ground, or Perſons employed by them,) ſhall on Conviction in one Month after the Offence, before one Juſtice, by Confeſſion or Oath of one Witneſs make ſuch Recompence, to the Party injured, and

* *Note*; This Statute extends to all Warrens, whether incloſed or not. *Hill.* 1 *Geo.* 1. *King* and *Weſton*. And Note alſo, that a Conviction upon this Statute muſt be by Confeſſion, or Oath of one ſufficient Witneſs, within a Month after the Offence, and before one Juſtice of the Diviſion.

† See Law Caſes, p.

'within

'within ſuch Time, as ſhall be appointed by 'the Juſtice, and alſo pay to the Overſeers of 'the Poor of the Pariſh where the Offence ſhall 'be committed, ſuch Sum as the ſaid Juſtice 'ſhall think fit, not exceeding 10*s.* in Default 'whereof they ſhall be committed to the Houſe 'of Correction, for any time not exceeding a 'Month, and they that uſe Snares, Hare-pipes, 'and other Engines, ſhall be liable to the ſame 'Penalty.' Same Stat. *ſ.* 5, 6.

'Perſons aggrieved by the Judgment of a 'Juſtice of Peace, may appeal to the next 'Quarter-Seſſions, whoſe Order ſhall be final, 'if no Title to any Land or Royalty be therein 'concerned.' Same *Stat.*

By Stat. 3 *Jac.* 1. *c.* 13. *ſ.* 5. 'If any Per-'ſon not having Lands or Hereditaments of '40 *l.* a Year, or not worth in Goods 200 *l.* 'ſhall uſe any Gun or Bow to kill *Conies*, or 'ſhall keep any Ferrets or *Coney*-Dogs (except 'he have Grounds incloſed for keeping of *Co-'nies*, the Increaſing of which ſhall amount to '40 *s.* a Year to be let, and except Warreners 'in their Warrens); in ſuch Caſes any Perſon 'having Lands worth 100 *l.* a Year may ſeize 'the ſame to his own Uſe.'

A Leaſe of a Warren *of* Conies.

THIS Indenture *made the* 20*th Day of* July *in the* 24*th Year of the Reign of our Sovereign Lord* George *the* Second, *by the Grace of God, of* Great Britain, France *and* Ireland, *King, Defender of the Faith,* &c. *and in the Year of*

of our Lord 1750. **Between** C. K. *of*, &c. *of the one Part, and* W. R. *of*, &c. *of the other Part,* **Witneſſeth**, *That the ſaid* C. K. *for and in Conſideration of the Yearly Rent and Covenants herein after mentioned on the Part and Behalf of the ſaid* W. R. *his Executors, Adminiſtrators and Aſſigns, to be paid, kept, done and performed,* **hath** *demiſed, granted and to farm letten, and by theſe Preſents* **doth** *demiſe, grant, and to farm let unto the ſaid* W. R. **all** *that*, &c. *and all the* Conies *in the ſaid Ground being, and to the ſame belonging, with the Increaſe, Gains, Profits and Advantages from Time to Time ariſing, coming, growing and renewing of and from the ſaid* Conies, *there to hunt, hay, ferret and pitch Nets, or otherwiſe to uſe the ſame, to and for the moſt Benefit and Advantage of the ſaid* W. R. *his Executors, Adminiſtrators and Aſſigns, that he or they can or may deviſe, in as large, ample, and beneficial Manner and Form, as the ſaid* C. K. *or any Perſon or Perſons have heretofore had, held, uſed, occupied or enjoyed the ſame*; **to have and to hold** *all the ſaid Warren or Piece of Ground, and Game of* Conies *in the ſame being or thereunto belonging, with all the Increaſe, Gains, Profits and Advantages of the ſame as aforeſaid, unto the ſaid* W. R. *his Executors, Adminiſtrators and Aſſigns, from the Feaſt of* St. Michael *the* Archangel *next enſuing the Day of the Date of theſe Preſents, for and during and unto the full End and Term of ſeven Years from thence next enſuing and fully to be compleated and ended*; **yielding and paying** *therefore Yearly and every Year, during the ſaid Term of ſeven Years hereby granted unto the ſaid*

C. K. *his Heirs or Aſſigns, the yearly Rent or Sum of* 10 l. *of lawful Money of* Great Britain, *on the four moſt uſual Feaſts or Quarter-days for Payment of Rent in the Year; that is to ſay, on the Feaſt-day of the Birth of our Lord* Chriſt, *the Feaſt of the Annunciation of the Bleſſed Virgin* Mary, *the Nativity of* St. John *the* Baptiſt, *and the Feaſt of* St. Michael *the* Archangel, *by even and equal Portions, and quarterly Payments; the firſt Payment thereof to be made on the Feaſt-day of the Birth of our Lord* Chriſt *next enſuing the Day of the Date of theſe Preſents.* And *the ſaid* W. R. *for himſelf, his Executors, Adminiſtrators and Aſſigns, and for every of them, doth covenant, promiſe and agree, to and with the ſaid* C. K. *his Heirs and Aſſigns, by theſe Preſents, in Manner and Form following, (that is to ſay) that he the ſaid* W. R. *his Executors, Adminiſtrators and Aſſigns, or ſome or one of them, ſhall and will well and truly pay, or cauſe to be paid, unto the ſaid* C. K. *his Heirs or Aſſigns, the ſaid yearly Rent or Sum of* 10 l. *before hereby reſerved, in ſuch Manner and on the Days and Times herein before limited and appointed for Payment thereof during the ſaid Term hereby demiſed:* [a Covenant to Repair, and at the End to leave the Berry and Coney-Clappers ſufficiently covered with Thorns, *&c.* and leave the ſame ſufficiently ſtored with *Conies*, and a Covenant for quiet Enjoyment.]

Amends pleaded for killing of a *Coney*.

And as to the Taking of the Coney *aforeſaid, that he in going by the publick Highway there killed*

killed the Coney *aforesaid, leaping before him, for which he often offered to pay the said Plaintiff reasonable Amends (that is to say) ten Pence for that said* Coney, *and is now ready here in Court to satisfy him thereof by the Discretion of the Court,* &c. *and this,* &c.

A Mittimus against a Person that refuseth to enter into Recognizance to appear at Sessions, for offending against *Stat.* 22 & 23 *Car.* 2.

To the Keeper, &c.

Middlesex, to wit. *Forasmuch as* H. H. *of,* &c. *being this present Day brought before me by Warrant, by the Constable of,* &c. *and being examined did upon his Examination confess, that he had kept and used Nets and Ferrets for the taking and killing of* Conies *by the Space of one Year last past, contrary to the Statutes in that Case made and provided; and he the said* H. H. *being required to enter into Recognizance for his Appearance at the next General Quarter-Sessions of the Peace to be holden for the said County, did refuse so to do; These are therefore in his Majesty's Name strictly to charge and command you, that you receive into your Custody the Body of the said* H. H. *whom I send you by* W. K. *one of the Constables of,* &c. *and him safely keep until he shall enter into such Recognizance as aforesaid, or that he be otherwise discharged according to Law: And hereof fail not at your Peril.* Given under my Hand and Seal, &c.

An Indictment upon the Stat. of 22 & 23 *Car.* 2. *c.* 25.

Middlesex, to wit, THE *Jury for our Sovereign Lord the King upon their Oath say, that* H. O. *of* H. *in the County aforesaid, Yeoman, the* 14*th Day of* August *in the seventh Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God of* Great Britain, France *and* Ireland *King, Defender of the Faith, and so forth, with Force and Arms, to wit, with Sticks, Hedging-Bills, Guns, Bows, and other offensive Weapons, the Free-Warren of* R. B. *at* H. *aforesaid in the County aforesaid, about the Hour of Eleven in the Night of the same Day, broke and entered, and in the same Free-Warren, with Greyhounds, Ferrets and Pursenets, without the Licence and against the Will of the aforesaid* R. B. *did come, and fifty Conies of the Value of* 25 s. *of the Goods and Chattels of him the said* R. B. *then and there found took and carried away, to the great Damage of him the said* R. B. *and against the Peace of our now Sovereign Lord the King, his Crown and Dignity, and also against the Form of the Statute in such Case made and provided.*

See Deer.

Law Cases.

The Statute 22 & 23 *Car.* 2. *c.* 25. *s.* 5. says, *upon the Borders of Warrens*; but if the *Conies* are out of the Warren, no Person hath any Property in them, and a Man may justify killing them if they eat up his Corn; but no

Action lies againſt the Owner of the Warren. 5 *Co.* 104.

So a Perſon that hath a Right of Common may kill them, when they are out of the Warren and deſtroy the Common; but he cannot have an Action on the Caſe againſt the Lord, for that would be to create a Multiplicity of Actions. *Cro. El.* 548. *Cro. Ja.* 195. *Cro. Car.* 388.

If a Man ſhould make *Coney-Burrows* in his own Ground, and put in *Conies*, and they increaſe ſo faſt, that they run into his Neighbour's Ground and deſtroy his Graſs, it hath been a Queſtion whether he may kill them; and it was adjudged in *Boulſton*'s Caſe that he might, and the Reaſon there given is, becauſe they are *feræ Naturæ* [*of wild Nature*]; but a better Reaſon is, becauſe a Man hath a Property in them *ratione loci* [*by reaſon of the Place*] when they are on his own Land; and therefore he may juſtify the killing *them*. *Boulton*'s Caſe, *Rep.* 104.

But 'tis otherwiſe if they are killed by him who hath a *Right of Common* only; as for Inſtance, In Treſpaſs for digging his Cloſe and killing eighteen *Conies*, the Defendant pleaded Not guilty as to all the Treſpaſs beſides the Killing eighteen *Conies*; and as to them he pleaded, that the Place where, *&c.* was a great Heath in which he had Common of Paſture, and that he found thoſe *Conies* eating the Graſs there, and ſo juſtified the Killing them, *&c.* Adjudged, that though *Conies* are *feræ naturæ*, yet when they are on the Lands of another, he

hath a Property in them by Reaſon of the Poſſeſſion, and therefore an Action lies either for killing or taking them; therefore in this Caſe, the *Conies* being on the Land of the Plaintiff, who had the Inheritance thereof, and the Defendant having only a Right of Common on thoſe Lands, he might have an Action on the Caſe, but could not juſtify the Killing them. *Coney*'s Caſe, *Godb.* 122. 4 *Leon.* S. C. By the Name of *Ould* againſt *Lucy*, 2 *Leon.* 201. S. C.

There is a Caſe in *Cro. Car.* where it was otherwiſe reſolved, *viz.*

The Plaintiff brought an Action on the Caſe againſt the Defendant, for that he (the Defendant) having a Wood adjoining to a Common where the Plaintiff and other Copy-holders of the Manner of *H.* had Right of Common, the Defendant kept *Conies* in his Wood, which ran out into the Common, and eat up the Graſs, *&c.* Adjudged, that the Action did not lie, becauſe when the *Conies* were out of the Wood, the Defendant had no Property in them, and the Plaintiff could be at no Inconvenience, for he *might kill them*; which is very true, if they had been *on his own Land*, but he had only a Right of Common there. *Hilſley* againſt *Wilkinſon*, *Cro. Car.* 387. *W. Jones* 356. S. C.

And ſo are the Authorities both before and after that Caſe, *(viz.)* In Treſpaſs for breaking and entring his Cloſe, and killing his *Conies*, the Defendant juſtified and preſcribed for Common in the Place where the Treſpaſs was ſuppoſed to be done, as appertaining to his Meſ-

ſuage

ſuage in *H.* and becauſe the *Conies* were feeding on his Common he killed them; and upon a Demurrer to this Plea it was inſiſted for the Defendant, that he might *juſtify the killing Them*, becauſe he had no other Remedy, as he might juſtify killing Foxes, or any other Vermin; but adjudged, that he could not *juſtify the Killing of Conies*, becauſe the Owner of the Soil where they are feeding hath a poſſeſſory Property in them againſt all People when they are there; and the Commoner hath no Manner of Right in the Soil itſelf, for he is only to take his Common, and may bring an Action againſt him who diſturbs him; beſides, *Conies* are Beaſts of Warren and profitable Beaſts, and therefore are not to be compared with Vermin, and the keeping of them is lawful, and the killing of them by the Commoner unlawful. *Bellow* againſt *Langden*, *Cro. El.* 876. *Owen* 114. S. C.

So in Treſpaſs for breaking his Cloſe, *necnon liberam Warrenam intravit*, [*alſo for entering his free Warren*] and for taking and carrying away ſo many *Conies*; the Defendant juſtified, for that he was ſeiſed of a Meſſuage and Lands in, *&c.* and preſcribed to have Common in the Place where the Treſpaſs was ſuppoſed to be done, and that he was there ready to uſe his Common; and then ſets forth, that many *Conies* were there Damage-feaſant, thereupon he entered and chaſed them out; and upon a Demurrer this was adjudged an ill Plea, becauſe the Plaintiff being only a *Commoner*, hath no Intereſt in the Land; he is only to take his Common, but cannot preſcribe againſt the

Lord, for as he may have great Beaſts there, ſo he may have Beaſts of Warren, and the Commoner cannot deſtroy them. *Hoddeſden* againſt *Griſſel*, 2 *Cro.* 195. *Palm.* 368. S. C. *Yel.* 44, 143. S. C. 2 *Bulſt.* 110. S. C. *Brownl.* 208. S. C. *Winch* 16. S. C. *Bridgm.* 10. S. C. *W. Jones* 12. S. C. by the Name of *Griſſel* againſt *Leigh.* See 1 *Brownl.* 227. *Lawley* againſt *Park*, S. P.

Upon a Demurrer the Queſtion was, whether a Man who hath Right of Common might deſtroy the *Conies* feeding on the Land, and fill up the *Coney-Burrows* in the waſte Ground; and adjudged that he could not, becauſe he hath no Intereſt in the Soil, other than to take the Common by feeding his Cattle there; and therefore muſt not fill up the Burrows, nor deſtroy the *Conies*. *Horſey* againſt *Heyburton*, 2 *Cro.* 229.

In Treſpaſs for hunting Three hundred *Conies*, with a *Continuando* from ſuch a Day to ſuch a Day; the Defendant juſtified, for that he had Right of Common in the Place where, *&c.* for 240 Sheep, as to his Meſſuage in *H.* appertaining, and that he, and all thoſe whoſe Eſtate he had therein, *&c.* have uſed, when and at ſuch Time as the Common was ſurcharged with *Conies*, to hunt, kill, and carry them away, *as to his ſaid Meſſuage belonging*, &c. And upon a Demurrer to this Plea it was adjudged, that the Preſcription was void, for as a Man cannot preſcribe in the Freehold of another, ſo he cannot preſcribe to hunt and kill *Conies*, *as to his Meſſuage belonging*. *Samborn* againſt *Harrilow*. *Sandford* againſt *Howell*, *Bridgm.* 21. *Godb.* 184.

Caſe,

Caſe, *&c.* wherein the Plaintiff made a Title under Coparceners, and preſcribed in them to have a Right of Common in *Hartſhorn*, as appurtenant to his Meſſuage there; and that the Defendant had made a Warren in the Common and *Coney-Burrows*, and put in *Conies*, *&c.* by Reaſon whereof he could not enjoy his Common ſo beneficially as before; the Defendant preſcribed to have a free Warren within the Manor of *H.* and ſo juſtified the making *Coney-Burrows*, and putting in *Conies*, *&c.* and averred, that the Plaintiff had ſufficient Common; the Plaintiff replied and maintained his Declaration, and traverſed the Sufficiency of the Common, and the Defendant's Preſcription to a free Warren; and upon a Demurrer to this Replication it was objected againſt the Plea, that the Lord of the Soil could not make *Coney-Burrows*, and put in *Conies* there to the Prejudice of the Defendant, who hath Right of Common, ſo that he could not enjoy the Benefit thereof; but the Plaintiff had Judgment, by which it appears the Lord might do it; but that if the *Conies* multiply ſo faſt, that the Plaintiff could not enjoy his Common, he might have an Action on the Caſe againſt the Lord. *Haſſard* againſt *Cantrel*, 1 *Lutw.* 107. *Nelſon's Lutw.* 36.

In Treſpaſs for breaking his Cloſe and hunting there, and killing *Centum Cuniculos ſuos*, *&c.* upon Not guilty pleaded, the Plaintiff had a Verdict and entire Damages; and it was moved in Arreſt of Judgment, that the Declaration was not good, becauſe the Plaintiff could not

have any *Property in the Conies*, and therefore could not call them *ſuos*, as he did in his Declaration, becauſe they are *feræ naturæ*, and by Conſequence *nullius in Bonis*; 'tis true if he had a Warren, then an Action *quare Warrenam fregit & Cuniculos ſuos cepit* might be well enough; but adjudged, that a Warren is only a Franchiſe to keep the *Conies*, and the Owner of ſuch Warren hath no greater Property in them in the Warren, than any other Man hath; when they are on his Lands; now in the principal Caſe the *Conies* being on the Plaintiff's Lands, he hath a local Property in them whilſt they are there, and no body can juſtify the Killing them. *Sutton* againſt *Moody*, 2 *Salk.* 556. *Newton* againſt *Rickards*, *Gedb.* 174. S. P. 1 Ld. *Raym.* 251.

In an *Action of Waſte* againſt the Leſſee of a Warren, the Waſte aſſigned was, *Stopping Coney-Burrows*: Adjudged, that the *Action* would not lie, becauſe a Man cannot have the *Inheritance of Conies*, nor any Property in them, but only the Poſſeſſion; 'tis true an *Action* will lie againſt him who makes Holes in the Land, but not againſt him who ſtops them up, becauſe the Land is better by making it plain. *Moyle* againſt *Moyle*, *Owen* 66.

One *Yates* was convict of killing Rabbits in a private Warren, by Inquiſition taken before a Juſtice of Peace, and was fined 20*s.* a Rabbit. Motion to quaſh the Inquiſition, becauſe the Juſtices of the Peace have no Authority to ſet a Fine upon a Man for ſuch Offence, for the Stat. 22 & 23 *Car.* 2. *c.* 25. gives treble Coſts and

and Damages, but no Fine; and the Stat. 4 & 5 *W. & M. c.* 23. extends only to Game, which cannot be intended to Rabbits kept in a private Warren *; and of this Opinion was the whole Court; and therefore the Inquiſition was quaſhed. *Rex* v. *Yates*, 1 Ld. *Raym.* 151.

Conſtable. By *Chart. Foreſtæ, c.* 16. 'No *Conſtable*, Caſtellain or Bailiff, ſhall hold 'Plea of the Foreſt, neither for green Hue or 'Hunting.'

Cottages. The Statute which gives Power to erect *Cottages* in the Waſte for poor People, doth not extend to Waſtes within Foreſts. 1 *Jones Rep.* 168, 169.

Coverts, Are thoſe Woods which are Thickets, and full of Trees touching one another, and ſignifies a Covering or hiding Place for the Deer.

Danger, A Duty paid to the Lord for Liberty to Plough and Sow in Maſt-time.

Deafforeſted, Signifies diſcharged from being a Foreſt; or Free and Exempt from the Foreſt-Laws.

Dewarrened, Is when a Warren is *diſwarrened*, or broke up and laid in Common.

Deer. By *Chart. Foreſtæ, cap.* 10. 'None ſhall loſe Life or Member for killing 'of *Deer*, but he ſhall be Fined for it, if he 'have any Thing; if not, he ſhall be Impri-'ſoned a Year and a Day, and (if he can find 'good Sureties) ſhall then be delivered; but 'if not, he ſhall then abjure the Realm.

* See Ld *Raym.* 151.

By *Stat.* * *3 Jac.* 1. *c.* 13. 'None ſhall '(without the Owner's Licence) Kill or Chaſe 'any *Deer* or *Conies* in any Parks or incloſed 'Grounds, in Pain to ſuffer three Months 'Impriſonment, to pay treble Damages to the 'Party grieved, to be aſſeſſed by the Juſtices 'before whom he ſhall be convicted, after the 'ſaid three Months expired, and to be bound 'with two good Sureties to his good Beha-'viour for ſeven Years, or to remain ſtill in 'Priſon till he find ſuch Sureties: But the 'Party grieved (being ſatisfied) hath Liberty 'to releaſe the Behaviour.

'Juſtices of *Oyer* and *Terminer*, Aſſize and 'Peace in Seſſions have Power to hear and 'determine theſe Offences; and Juſtices of 'Peace in Seſſions (upon Confeſſion and Satis-'faction to the Party grieved) have Power to 'releaſe the Behaviour.

'This Act ſhall not extend to any Park or 'incloſed Ground hereafter to be made or uſed 'for *Deer* or *Conies*, without the King's Li-'cence.'

By *Stat.* 7 *Jac.* 1. *c.* 13. 'It ſhall be in the 'Election of the Party grieved, whether he will 'take for Satisfaction 10 *l.* in Money, or treble 'Damages, as by the foregoing *Statute.*'

By *Stat.* † 13 *Car.* 2. *c.* 10. 'They that 'courſe, kill, hurt or take away red or fallow

* The Statutes before this Time, *viz.* 13 *R.* 2. *c.* 13. and 5 *Eliz. c.* 21. being found ineffectual to ſuppreſs Offences of this Nature; therefore to provide a more circumſpect Remedy, this Statute was made.

† By this Statute a Reward is given to an Informer, which was not before.

'*Deer*

'*Deer* in any Ground where *Deer* are kept, 'without the Conſent of the Owner, or Per-'ſon chiefly intruſted therewith, or are aiding 'therein, if convicted by Confeſſion or Oath 'of one Witneſs before one Juſtice of the 'Peace, being proſecuted within ſix Months 'after the Offence done, ſhall forfeit 20 *l.* to 'be levied by Diſtreſs and Sale by Warrant 'under the ſaid Juſtice's Hand; one Moiety 'thereof to the Informer, the other to the 'Owner of the *Deer*; and for want of ſuch 'Diſtreſs, ſhall be committed to the Houſe of 'Correction for ſix Months, or the common 'Gaol for a Year, and not to be diſcharged 'till Security given for their good Behaviour 'one Year after their Inlargement.

'None puniſhed by Virtue of this Act ſhall 'incur the Penalty of any other Law for the 'ſame Offence.'

By *Stat.* 3 & 4 *W.* & *M. c.* 10. *ſ.* 2. "If "any Perſon ſhall *unlawfully* * courſe, hunt, "take in Toils, kill, wound, or take away, "any red or fallow Deer, *in any Foreſt, Chaſe, "Purlieu, Paddock, Wood, Park, or other Ground "incloſed, where Deer are, have, or ſhall be uſu-"ally kept* †, without the Conſent of the Owner "or Perſon chiefly intruſted with the Cuſtody "thereof; or ſhall be *aiding or aſſiſting* ‡ *there-*

* Where a Man kills Deer in Purſuance of a ſuppoſed Right which he has, he is not within the Intent of this, or any of the other Acts againſt Deer ſtealing. Ld. *Raym. Rep.* 584.

† See the Caſe of the *King* v. *Calcutt* and *Monk*, p. and p. Ld *Raym.* 791.

‡ See p. Salk. 542, 543.

" *in* ‖‖; and *ſhall be convicted thereof, in* 12 " *Months after the Offence* *, by Confeſſion, or " *Oath of one Witneſs* †, before one Juſtice " where the Offence ſhall be committed, or the " Party apprehended, *every ſuch Perſon ſo of-* " *fending* ‡ by unlawful Courſing or hunting on- " ly, when no Deer is taken wounded or kill- " ed, ſhall forfeit for every ſuch Offence 20 *l.* " And in Caſe any Deer ſhall by ſuch Perſon " be wounded, taken in Toils, or killed, he " ſhall forfeit for every ſuch Deer 30 *l. to be* " *levied by Diſtreſs* ‖ upon the Goods and Chat- " tels of the Offender *by Warrant of ſuch Ju-* " *ſtice* §; *one third to the Informer, one third to* " *the Poor where the Offence ſhall be committed,* " *and one third to the Owner of the Deer* * *: for*

" *Want*

‖‖ See the *King* v. *Simpſon*, p. and alſo p. Note *(a)* Tit. Game.

* By 9. *Geo.* 1. *c.* 22 *ſ.* 13. This Proſecution may be commenced at any Time within three Years after the Offence.

† See p. The *King* v. *Stone* Tit. *Dogs*.

‡ Where ſeveral Perſons are convicted, they forfeit *each* 30 *l.* 1 *Salk.* 182.

‖ Tho' Sale of the Goods is not mentioned in the Statute, yet nevertheleſs where the Law gives a Diſtreſs for a publick Benefit, the Officer may ſell. 1 *Salk.* 379.

§ Altho' the Conſtable is not appointed to execute this Warrant, nor is he ſo much as named in the Clauſe; yet he is bound to obey the Warrant, and is indictable if he does not. But he need not return the Warrant itſelf, for that is not required, and it may be neceſſary to keep it for his own Juſtification; but he muſt either return the Warrant, or certify what he has done upon it. 1 *Salk.* 381.

* * The Penalty need not be diſtributed by the Conviction; *viz.* 10 *l.* to the Informer, 10 *l.* to the Poor, and 10 *l.* to the Party grieved; for the Judgment in ſuch Caſes ſeldom

" *Want of ſufficient Diſtreſs* *, ſuch Perſon ſhall " be impriſoned for a Year, and ſet in the Pil- " lory an Hour on ſome Market-Day in the " next adjoining Town to the Place where the " Offence was committed, by the chief Officer of " ſuch Market Town, or his under Officer."

' Conſtables, *&c.* by a Juſtice's Warrant, ' may enter and ſearch as for Stolen Goods; ' and if any Veniſon or Skins of *Deer*, or Toils ' be found, ſhall carry ſuch Offender before a ' Juſtice of Peace; and if he do not give a ' good Account how he came by them, or in ' ſome convenient Time to be ſet by the ſaid ' Juſtice produce the Party of whom he bought ' them, or prove ſuch Sale upon Oath, he ſhall ' be convicted of ſuch Offence, and be ſubject ' to the Forfeitures and Penalties hereby inflict- ' ed for killing one *Deer*.' 3 *W. & M. c.* 10. *ſ.* 3.

And by *Stat.* 9 *G.* 1. *c.* 22. ' Any Juſtice ' may iſſue his Warrant for this Purpoſe, and ' if any Veniſon or Skin of any Deer ſhall be ' found in the Cuſtody of any Perſon, and it ' ſhall appear that ſuch Perſon bought ſuch Ve- ' niſon or Skin of any one who might be juſtly ' ſuſpected to have unlawfully come by the ' ſame, and doth not produce the Party of ' whom he bought it, or prove upon Oath the

dom mentions a Diſtribution; it is enough to ſay, that he is convicted, and hath forfeited 30*l.* according to the Statute. 1 *Salk.* 383.

* If the Juſtice finds there is nothing to diſtrain, then he muſt make a Record thereof, and make an Adjudication for *Corporal* Puniſhment; but the Offender is not to pay Part, and ſuffer *corporally* for the Reſidue. Ld. *Raym.* 546, 1195, 6. See the Caſe of *Dominus Rex* v. *Whitlock*, p.

' Name

'Name and Place of Abode of ſuch Party, 'then the Perſon who bought the ſame ſhall be 'convicted of ſuch Offence by any Juſtice of 'the Peace, and ſhall be ſubject to the Penalty 'above inflicted for killing one *Deer*.

'After Conviction the Conſtable, *&c.* or 'Perſons proſecuting, may detain ſuch Offen-'ders in Cuſtody, if they do not preſently pay 'the Monies due on the Conviction, till a Re-'turn may be made of the Warrant for Diſtreſs, 'ſuch Detainer not exceeding two Days. *Same 'Stat. ſ.* 4.

'Any Owners of *Deer*, in any incloſed 'Ground, or any acting under them, may re-'ſiſt ſuch Offenders, and be indemnified, as if 'the Fact had been committed in any ancient 'Chaſe or Park. *Stat. 3 W. & M. c.* 10. *ſ.* 5.

'No *Certiorari* ſhall be allowed, *&c.* Tit. **Certiorari**, p. 11.

'No Offender puniſhed by Virtue of this 'Act ſhall incur the Penalty of any other Law 'for the ſame Offence. *Same Stat.*

'All Perſons proſecuted for any Thing done 'in Purſuance of this Act, may plead the ge-'neral Iſſue, and give the ſpecial Matter in 'Evidence. *Same Statute.*

'By *Stat.* 5 *Geo.* 1. *c.* 15. 'After Confir-'mation of any Conviction on the above *Stat.* 'of 3 & 4 *W. & M. c.* 10. by any ſuperior 'Court, and delivering the Rule to the Juſtice, 'whereby ſuch Conviction was confirmed, ſuch 'Juſtice may proceed as if a *Procedendo* had been 'granted.' See *King* v. *Whitlock*, p.

'In

'In a Proſecution on this *Stat.* or the ſaid '*Stat.* 3 & 4 *W.* & *M.* *c.* 10. Defendant may 'plead the General Iſſue; and if a Verdict paſſes 'for the Defendant, or the Plaintiff be non-'ſuited, &c. the Defendant ſhall have treble 'Coſts, and a like Remedy for the ſame, as 'any Defendant hath in any other Caſe in Law.

'The Perſon convicted upon the *Stat.* 3 & 4 '*W.* & *M.* *c.* 10. ſhall, before he is diſcharged 'out of Cuſtody, be bound to the Party grieved 'in 50 *l.* with Condition to be of good Beha-'viour, and not to offend in the like Manner; 'and if he refuſe to give ſuch Bond, he ſhall 'be committed to Gaol till he doth; and if af-'ter ſuch Bond given he ſhall be again con-'victed for any Matter in the ſaid Stat. of 3 & '4 *W.* & *M.* the Bond ſhall be forfeited, and 'the Penalty with Coſts ſhall be recovered in 'any Court at *Weſtminſter*, over and above the 'Forfeitures, and diſtributed in the ſame Man-'ner as the Forfeitures are by that Statute; and 'the Party convicted ſhall be likewiſe liable to 'the Pains and Forfeitures in the ſaid Act. And 'the Juſtice ſhall certify a true Copy of the 'Conviction under his Hand and Seal, to the 'next Quarter-Seſſions, there to be kept among 'the Records.'

'If a Keeper, or other Officer of any Foreſt, 'Chaſe, Purlieu, Paddock, Wood, Park, or 'Place where *Deer* are uſually kept, ſhall be 'convicted on the ſaid Statute of 3 *W.* & *M.* 'c. 10. of killing or taking away any *Deer*, or 'of aiding or aſſiſting therein, without the Con-'ſent of the Owner, or Perſon chiefly intruſted

'with

'with the Cuſtody thereof, ſuch Keeper or 'other Officer ſhall forfeit 50 *l.* for each *Deer* 'ſo killed or taken away, to be levied by Diſ-'treſs, *&c.* and diſtributed as the Forfeitures in 'the ſaid Act; and for want of Diſtreſs ſhall 'be committed for three Years, and be ſet 'in the Pillory two Hours on ſome Market-'Day, in the next adjoining Town to the Place 'where the Offence was committed.'

By *Stat.* 5 *Geo.* 1. *c.* 28. *ſect.* 1. 'Entering 'into any Park, Paddock, or other *incloſed* 'Ground where *Deer* are kept, and wilfully 'killing any *Deer* there without Authority, or 'ſhall be aiding or aſſiſting therein, and being 'indicted for the ſame, and convicted before a 'Judge of Aſſize, by Verdict or Confeſſion, 'ſhall be ſent to the Plantations for ſeven 'Years; and the Court may make an Order to 'transfer ſuch Perſon to the Uſe of him who 'ſhall contract for the Performance of ſuch 'Tranſportation.

'*Sect.* 2. Nothing herein ſhall repeal any 'former Law made for the Puniſhment of Deer-'Stealers; and when any Offender ſhall be pu-'niſhed by Force of this Act, he ſhall not be 'proſecuted by Force of any other Law.'

In the Reign of King *Geo.* 1. there ſprung up a Set of deſperate Villains called *Waltham Blacks*, headed by one whom they ſtiled King *John*, who blacking their Faces, and uſing other Diſguiſes, robbed Foreſts, Parks and Warrens, deſtroyed Cattle, levied Money on their Neighbours by Threats and Menaces to fire their Houſes, and committed divers other Violences

and

and Outrages, to the great Terror of the People; therefore by *Stat.* 9 *Geo.* 1. *c.* 22. (made for the preventing ſuch wicked and unlawful Practices), it is enacted, 'that if any Perſon 'or Perſons being armed with Swords, Fire 'Arms, or other offenſive Weapons, and having his or their Faces blacked, or being 'otherwiſe diſguiſed, ſhall appear in any Foreſt, 'Chaſe, Park, Paddock, or Grounds *incloſed* 'with *any* Wall, Pale or other Fence, wherein 'any *Deer* have been or ſhall be uſually kept, 'or in any Warren or Place where *Hares* or *Conies* have been or ſhall be uſually kept, or 'ſhall unlawfully and wilfully hunt, wound, 'kill, deſtroy, or ſteal any Red or Fallow 'Deer, or unlawfully rob any Warren or Place 'where *Hares* or *Conies* are uſually kept, or 'ſhall unlawfully ſteal or take away *Fiſh* out of 'any River or Pond; or if any Perſon or Perſons (*whether armed or diſguiſed or not* *) ſhall 'unlawfully and wilfully hunt, wound, kill, 'deſtroy, or ſteal any Red or Fallow Deer, fed 'or kept in any Places in any of his Majeſty's 'Foreſts or Chaſes, which are or ſhall be *in-cloſed* with Pales, or other Fences, or in any 'Park, Paddock, or Grounds *incloſed*, where '*Deer* have been or ſhall be uſually kept; or 'ſhall unlawfully and maliciouſly break down 'the Head or Mound of any Fiſh-Pond, 'whereby the Fiſh ſhall be loſt or deſtroyed, 'or ſhall forcibly reſcue any Perſon being lawfully in Cuſtody of any Officer or other Perſon, for any the ſaid Offences; or ſhall by

* See *Burn*'s Juſtice, 92. 5th Edit. Fol.

'Gift

'Gift or Promiſe of Money or other Reward, 'procure any of his Majeſty's Subjects to join 'with him or them, in any ſuch unlawful Act; 'every Perſon ſo offending, being thereof law-'fully convicted, *(in any County in* England) 'ſhall be adjudged guilty of Felony without 'Benefit of Clergy.

'If any Perſon ſhall be killed, or wounded 'ſo as to loſe an Eye or the Uſe of any Limb, 'in apprehending, or endeavouring to appre-'hend ſuch Offenders, on Proof thereof at the 'General Quarter-Seſſions for the County, *&c.* 'the Juſtices ſhall give Certificate thereof to 'the Perſon ſo wounded, or the Executors, *&c.* 'of the Party ſo killed, which ſhall intitle them 'to 50 *l.* to be paid by the Sheriff in thirty 'Days after Sight of the Certificate, on For-'feiture of 10 *l.* for which Sum ſuch Perſon 'may bring his Action upon the Caſe againſt 'the Sheriff.

'Proſecutions on 3 *&* 4 *W. & M. c.* 10. to 'be commenced in three Years.

'Every Offence againſt this Stat. may be 'tried in any County in *England*, as if the Fact 'had been there committed: But no Attainder 'for any of the Offences in this Act ſhall make 'any Corruption of Blood, Loſs of Dower, or 'Forfeiture of Lands, Tenements, Goods or 'Chattels.

'By *Stat.* 10 *Geo.* 2. *c.* 32. 'Perſons a ſe-'cond Time convicted, by Indictment or In-'formation, of Hunting, taking in Toils, Kill-'ing, Wounding or taking away any Red or 'Fallow *Deer* out of open or *unincloſed* Foreſts

or

'or Chaſes, during the Continuance of the Act 'of the 9 *Geo.* 1. to be tranſported for ſeven 'Years, and to return, *&c.* is Felony without 'Benefit of Clergy.'

Note; The Stat. 9 *Geo.* 1. *c.* 22. extends only to Foreſts, Chaſes, Parks, Paddocks, or Grounds *incloſed* for *Deer*, (except the Offender be withal armed or diſguiſed) and therefore the firſt Offences in *unincloſed* Places are puniſhable by 3 *&* 4 *W. & M.* which inflicts only a pecuniary Penalty; and ſecond Offences by the Clauſe in Stat. 10 *Geo.* 2. *c.* 32. above; and Offenders are by this Stat. 'ordered to be tried 'for ſuch ſecond Offence before the Juſtices of 'Aſſiſe, *&c.* for that Place where the ſecond 'Offence was committed, and the Juſtice of 'the Peace before whom ſuch Offender was 'convicted of ſuch firſt Offence, to certify a 'true Copy of ſuch Conviction, under Hand 'and Seal, to the next Quarter-Seſſions; and 'the Clerk of the Peace (on Application) to 'certify a Tranſcript of ſuch Conviction, and 'the ſame to be a ſufficient Proof of ſuch Of-'fender's firſt Offence.'

And by another Clauſe in the ſaid Act of 10 *Geo.* 2. *c.* 32. 'Perſons coming armed, (during 'the Continuance of ſaid Act 9 *Geo.* 1. *c.* 22.) 'into a Foreſt, Chaſe, or Park, wherein *Deer* 'are uſually kept (*whether incloſed or not*) with 'an Intent to courſe, hunt, take in Toils, 'kill, wound, or take away any Red or Fal-'low *Deer*, and ſhall there unlawfully beat or 'wound any Keeper or Page of any ſuch Fo-'reſt, Chaſe, or Park, their Servants or Aſſiſt-

'ants

'ants in the Execution of their Office, and be 'thereof lawfully convicted, he ſhall be tranſ-'ported for ſeven Years.'

By *Stat.* 31 *Geo.* 2 p. 1039. the Clauſes in Stat. 10 *Geo.* 2. *c.* 32. relating to the unlawful hunting or taking of any Red or Fallow *Deer* in Foreſts or Chaſes, or beating and wounding the Keepers or other Officers in Foreſts, Chaſes, or Parks, and which were to continue in Force during the Continuance of Stat. 9 *Geo.* 1. *c.* 22. and which by ſeveral ſubſequent Acts were to be continued until 1 *September* 1757 and from thence *&c* are made perpetual.

By *Stat.* 28 *Geo.* 2. *c.* 19. *ſ.* 3. 'If any Per-'ſon, not having a legal Licence, ſhall ſet fire 'to, burn or deſtroy (or be aiding therein) any 'Goſs, Furze, or Fern, in any Foreſt or 'Chaſe, without Conſent of the Owner or Per-'ſon chiefly intruſted with the Cuſtody of ſuch 'Foreſt or Chaſe, or of ſome Part thereof, and 'being brought before a Juſtice ſhall be thereof 'convicted of deſtroying Covert for *Deer* and 'Game, by Confeſſion or Oath of one Witneſs, 'or on View of the Juſtice, he ſhall forfeit not 'exceeding 5 *l.* nor leſs than 40 *s.* half to the 'Informer, half to the Poor; if not forth-'with paid, to be levied by Diſtreſs; and if 'no ſufficient Diſtreſs can be found, the Juſtice 'ſhall commit him to the common Gaol, for 'any Time not exceeding three Months, nor 'leſs than one Month.'

An

An Information againſt *Deer-Stealers*.

The Information of *F. F.* of, &c. taken by *W. H.* Eſq; one of his Majeſty's Juſtices of the Peace for the County of, &c. the 27th Day of, &c.

THIS Informant *upon his Oath ſaith,* **That** *on,* &c. *laſt paſt in the Night-time,* W. P. *of,* &c. *and* A. T. *of,* &c. *did enter into the Park of* T. D. *Eſq; ſituate,* &c. *And then and there, with Harneſs made for that Purpoſe, did take and kill one fallow* Deer *of the ſaid* T. D.'s, *and when they had ſo killed the ſaid* Deer, *they laid the ſame upon a Horſe, and carried away the ſame to,* &c.

F. F.

A Warrant Dormant for *Deer*.

KNOW *all Men by theſe Preſents,* **That** *I* P. M. *have given and granted,* **And by theſe Preſents** *do give and grant unto my well-beloved Friend* R. P. *one Stag and two Bucks in Summer, and one Hind and two Does in Winter, yearly, to be taken in my two Parks called* H. *and* W. *of my Gift yearly, during his Life.* **And** *I licenſe, give Authority and Power to the ſaid* R. P. *and his ſufficient Deputy, yearly, in the Seaſon, to go into my ſaid Parks, calling the Keeper or Keepers thereof with him, there to hunt and kill the ſame* Deer, *and them to bear and carry away at his Liberty and Pleaſure, with ſuch convenient Number of Perſons as he ſhall like, for and about doing*

doing the ſame. And *my further Will is, that if the ſaid* R. P. *yearly ſometimes will not come himſelf for the ſame, then I will that my Keeper or Keepers of my ſaid two Parks for the Time being, upon Sight of a Bill ſigned with the Hand of the ſaid* R. P. *concerning the ſame, ſhall kill and deliver from Year to Year the ſaid Summer and Winter* Deer, *without any Reſtraint or Gainſaying by them or any of them, in any wiſe to be made or done.* In Witneſs *whereof,* &c.

A Warrant for Courſing *Deer* in a Park. (Stat. 3 & 4 *W. & M. c.* 10.) The like Warrant, &c. *mutatis mutandis*, to levy 30 *l.* for taking in Toils, &c. aiding and aſſiſting.

To the Conſtable of, &c.

Somerſet, to wit. } *WHereas it hath been duly proved before me, That* G. P. *of* B. *in the County aforeſaid, did on the 5th Day of* September *laſt unlawfully Courſe* (or as the Fact is) *one fallow* Deer *in the Park of* J. S. *of* T. *without his Conſent, or Perſon intruſted with the Keeping thereof: Theſe are therefore in his Majeſty's Name to require you to levy by Diſtreſs and Sale of the Goods of the ſaid* G. P. *the Sum of* 20 *l.* * *which was adjudged to be forfeited by him on his Conviction before me for the ſaid Offence, and that you pay one third Part to* A. B. *the Informer, another third Part to the Churchwardens or Overſeers of the Poor*

* For every Deer wounded, 30*l.* by the ſame Statute.

If

of the Pariſh of L. *where the ſaid Offence was committed, for the Uſe of the Poor of the ſaid Pariſh, and the other third Part to* J. S. *Owner of the ſaid* Deer, *according to the Act of Parliament in that Caſe made: And if no Diſtreſs can be found, that then you certify the ſame to me.*

The Form for the Commitment, Tit. **Park**, p. will ſerve in this Caſe, *mutatis mutandis.*

No Precedent for killing *Deer*, &c. becauſe it is Felony, by Stat. 5 *Geo.* 1. *c.* 28. 9 *Geo.* 1. *c.* 22. 10 *Geo.* 2. *c.* 32.

A Warrant to ſearch after Veniſon and *Deer*-Skins. (*Vide Shaw's Juſtice*, Vol. 1. *p.* 297. for a Precedent of this Kind.)

To the Conſtable of, &c.

Eſſex, } *BY Virtue of an Act of Parliament*
to wit. } *made in the third and fourth of King* William *and Queen* Mary, *Theſe are to authoriſe and require you, on Sight hereof, to enter into and ſearch the Houſes, Outhouſes, (as for ſtolen Goods) and all other Places belonging to ſuch Perſon or Perſons, within your Precincts, as you ſhall juſtly ſuſpect or be informed to have in their Cuſtody any Veniſon or Skins of* Deer, *not being lawfully qualified; and if on your Search, you ſhall find Veniſon or Skins of* Deer, *then you are preſently to bring ſuch Perſon or Perſons, in whoſe Cuſtody the ſame ſhall be found, before me or ſome other of his Majeſty's Juſtices of the*

the Peace for this County, to be proceeded againſt for ſuch Offence, according to Law. Given, *&c.*

A Warrant to levy the Penalty. (*Vide Shaw's Juſtice*, Vol. 1. *p.* 297.)

To the Conſtable of, *&c.*

Eſſex, to wit. } *WHereas* A. B. *of your Pariſh is brought before me (being one of his Majeſty's Juſtices of the Peace for this County) for having Veniſon or Skins of* Deer *in his Poſſeſſion, and upon his Examination before me he cannot give a good Account how he came by the ſame, nor produce a credible Witneſs to prove on Oath the Sale thereof; whereby he hath forfeited the Sum of* 30l. *of lawful Money; one third Part to the Informer, another third Part to the Poor of the Pariſh where the Offence was committed, and the other Part to the Owner of the* Deer, *according to the Act of Parliament in that Caſe made: Theſe are therefore to authorize and require you, on Sight hereof, to levy the ſaid Sum of* 30l. *by Diſtreſs and Sale of the Goods of the ſaid* A. B. *for the Uſes aforeſaid, rendering to him the Overplus; but for want of ſufficient Diſtreſs whereon to levy the ſame, you are forthwith to convey the ſaid* A. B. *to the Gaol at* ——— *for the ſaid County, to be by the Keeper thereof ſafely kept for twelve Months, and then to be ſet on the Pillory for one Hour, in the next Market Town.* Given, *&c.*

An

An Indictment for hunting and taking *Deer* in the Park of *E. T.* Esq;

Essex, to wit. } *THE Jury*, &c. *That* O. D. *of* E. *in the County aforesaid, Yeoman, the third Day of* July *in the seventh Year of the Reign*, &c. *about the Hour of Twelve in the Night of the same Day, gathered to himself divers other evil disposed Persons unknown, and the Peace of our Sovereign Lord the King that now is broke, with Force and Arms*, to wit, *with Sticks, Swords, Daggers, Knives, and other Weapons, the Close and Park of* E. T. *Esq*; *at* A. *in the County aforesaid, unlawfully broke and entered, and the* Deer *of him the said* E. T. *then and there feeding and lying in the Park aforesaid, with two Greyhounds did hunt, and with a Buckstall which the aforesaid* O. D. *in the Park aforesaid then had, and the Dogs aforesaid then and there two Does took, killed, and carried away, against the Peace*, &c. *to the great Damage of him the said* E. T. *and against the Form of the Statute*, &c.

Law Cases.

Deer in a Park shall go to the Heir, and not the Executor. 1 *Inst.* 8.

He that hath Land adjoining to a Chase, may hunt *Deer* out of his Ground with a little Dog, but not with Beagles; and by some, if the Dog follow them into the Chase, and the Owner beat them back, yet if they kill the *Beast*, Trespass doth not lie. See 18 *H.* 6. *fo.* 21.

21. Held, that if a Man go in the way adjoining to a Park, and his Dogs break his Leaſh and kill a *Deer* in the Park againſt his Will, and he call them back, he ſhall not be puniſhed; but it ſeems that if he do not what he can to hinder them, it ſhall be a Treſpaſs. 48 *Ed.* 3. *fol.* 8. *Kitchin* 119, 120.

If a Perſon kill another by ſhooting *Deer*, *&c.* in a third Perſon's Park, he is guilty of Manſlaughter. *Hawkins*'s *Pleas of the Crown*, 1 *B.* 74.

The Defendant was convicted upon the Statute 13 *Car.* 2. and immediately brought a Writ of Error, and moved to be bailed till the Error was determined; but it was denied, becauſe he was in Execution for a Fine; and thereupon he was committed to the *Marſhalſea*; and there being another Indictment againſt him at the Seſſions for *Deer-ſtealing*, to which he pleaded Not guilty, it was ruled upon a Motion, that it ſhould be removed and tried in the Court of King's Bench. One *Stirt* was convicted upon the ſaid Statute, and a Warrant being made to levy the Penalty of 20 *l.* by Diſtreſs and Sale of his Goods, the Defendant, to whom the ſaid Warrant was directed, refuſed to execute it; whereupon he was indicted, which being removed by *Certiorari*, it was objected, that it did not appear *where the Warrant was made, or that it was made by the ſame Juſtice before whom the Party was convicted* (which is expreſly required by the Statute); beſides the Indictment was inſufficient, it being *pro injuſtâ Venatione*, *&c.* which is not good upon this Statute without

out *killing the Deer:* The Indictment was quaſhed. *The King* againſt *Whitmore*, *Sid.* 286. *The King* againſt *Marſhall*, *Sid.* 320. S. P.

A Conviction upon this Statute was removed by *Certiorari* into *B. R.* but it was moved, that it might not be filed, becauſe if the Court ſhould be poſſeſſed of the Cauſe, they cannot puniſh the Offender; for the Statute appoints the Execution to be by Diſtreſs and Sale, by Virtue of a Warrant made *by the Juſtice before whom the Party was convicted*; and becauſe a Writ of Error doth not lie upon ſuch a Conviction, therefore a *Procedendo* was granted. *Gawdy* againſt *Felton*, 1 *Keb.* 813.

The Defendant was indicted on the 3 & 4 *W. & M.* for *Deer-ſtealing*, and the Exception to it was, that it did not appear *in what Year, or on what Day*, the *Deer* was killed; then as to the Form of the Indictment, it was objected that it did not appear how or in what Manner he was convicted, either by *Confeſſion* or by *Witneſs*, as the *Statute* requires: but it was adjudged, that if the *Deer* was killed within a Year before the Indictment, it was ſufficient, and that the Indictment was good, though it did not appear in what Manner the Defendant was convicted. 1 *Salk.* 381.

A Perſon was convicted upon the *Statute* of *Deer-ſtealing*, and it appeared by the Conviction, that the *Deer* were not in a Park *incloſed*, *&c.* upon Motion in the *King's Bench* the Conviction was *quaſhed*. *Mich.* 9 *W.* 3. *B. R. The King* againſt *Pennoyer*.

A Conviction for killing *Deer* was quaſhed, becauſe it ſaid only that he killed *Deer in a certain Place where Deer had been uſually kept*, and did not ſay *incloſed* *. Ld. *Raym.* 791.

A Conviction againſt the Defendant for killing *Deer* was removed into *B. R.* by *Certiorari*, and was quaſhed, becauſe it ſaid only, that he killed *Deer in quodam loco*, where they had been uſually kept, and did not ſay *incloſed*. *Trin.* 1 *Ann. Regina* v. *Moore*, 2 Ld. *Raym. Rep.* 791.

At every Juſtice-Seat, the Number of *Deer* muſt be preſented which have been given away by Warrant, and ſuch as have died, or have been otherwiſe killed ſince the laſt Court. *Manwood* 104.

Convictions (two or more) of *Deer-ſtealing*, before Juſtices of the Peace upon Stat. 3 & 4 *W. & M. c.* 10. were removed by *Certiorari* into *B. R.* and Exceptions being taken, the Queſtion was, whether upon the ſaid Statute Juſtices of the Peace might convict the Offender in his Abſence, upon his Default to appear, being duly ſummoned. The whole Court (upon great Conſideration) were of Opinion, that the Convictions were good Convictions, though taken in the Abſence of the Party. The *Queen* and *Simpſon*, *B. R. Lucas Rep.* 378.

A *Deer-ſtealer* may be convicted upon the Statute 3 & 4 *W. & M. before Appearance, if duly ſummoned*, but an Attorney in theſe Caſes may be made to defend, for the Offender may intruſt his Defence with another, and the Juſtices cannot enforce him to appear in Perſon. *Hil.* 3

* See *Stat.* 3 *W. & M. c.* 10.

Geo.

Geo. 1. *Dominus Rex* v. *Simpſon*, in *B. R.* 1 *Str.* 44.

Certiorari to remove a Conviction for *Deer-ſtealing*; it was objected, that the *Conviction* appeared to be a Year after the Day when the Information was exhibited; but adjudged, that if the Information is proſecuted within a Year after the Fact, 'tis well enough, becauſe it is a good Commencement of the Suit, and 'tis from the Conviction that the Time in ſuch Caſes is to be computed.

Then it was objected, that the Diſtribution of the Forfeiture ought to have been made by the Judgment, *(viz.)* ten Pounds to the Informer, ten Pounds to the Party grieved, and ten Pounds to the Poor, *&c.* but here it was, that the Defendant *convictus eſt & forisfaciat ſummam* 30l. *juxta formam ſtatuti* [*is convicted and hath forfeited the Sum of* 30l. *according to the Form of the Statute*;] but adjudged, that the Judgment in ſuch Caſes ſeldom or never makes any Diſtribution, becauſe it is only conditional; for if the Offender hath not Goods to be diſtrained, he cannot forfeit, but muſt be puniſhed in another Manner. *The Queen* againſt *Barret*, 1 *Salk.* 383.

The Defendant was convicted upon the *Statute* 3 & 4 *W.* by a Juſtice, who entered into a Glover's Houſe, and finding a *Deer-Skin* there aſked him how he came by it, who anſwered, that he bought it of *T. S.* who not giving a good Account of himſelf, he the ſaid *T. S.* was convicted; and adjudged, that the Juſtice might

enter and convict the ſaid *T. S.* who ſold it. *The Queen* againſt *Jennings*, 1 *Salk.* 383.

Two Perſons were convicted upon the ſaid Statute for *Deer-ſtealing*, and Judgment was given, that each of them ſhould forfeit 30 *l.* and this being removed into *B. R.* it was inſiſted, that this being but one Offence, there ought to be but one Forfeiture, *viz.* 30 *l.* and no more; but adjudged, that the Forfeiture is not in Nature of Satisfaction to the Party grieved, but a Puniſhment of the Offender, and Crimes are ſeveral, though Debts are joint. *Partridge* againſt *Nailour*, *Cro. Eliz.* 480. *The Queen* againſt *King*, *Noy* 60. S. C. *Moor* 453. S. C.

The Queſtion was, whether he, who *lent Dogs* to another to courſe *Deer*, was *aiding and aſſiſting in the Hunting*; and by the Opinion of the three Judges he was; but *Holt* Chief Juſtice was of a contrary Opinion; for this being a Queſtion upon a penal Law, which ought to be conſtrued ſtrictly, then he who *lent the Dogs* could not be *aſſiſting in the Act of Hunting*, and ſo not within the Words of the Statute, which are *aiding and aſſiſting* therein; now he was not aſſiſting *therein* though by lending his Dogs he might be aſſiſting *thereunto*. See p. 57.

A. lends his Dogs to kill *Deer* in a Park, and Horſes to hunt and carry it away; *A.* is aiding and aſſiſting therein within the Stat. of 3 & 4 *W. & M. c.* 10. tho' he be not actually preſent. *Hil.* 1 *Annæ.*

A Conviction for *Deer-ſtealing* was removed into *B. R.* and there it was confirmed; and upon

upon a *Levari facias* directed to the Sheriff, he levied the 30 *l.* Forfeiture by Sale of the Goods; and adjudged, that the Sale was good, becauſe the Court being poſſeſſed of the Cauſe, the Record could not be ſent back again to the Juſtices; and as they have Power to confirm the Conviction, by Conſequence they have Power to award Execution, which muſt be by the Sheriff, who is the Officer of the Court, and not by the Conſtable; and it muſt be by *Levari facias*, becauſe the Words of the Statute are, that the Offender ſhall forfeit, *&c.* to be levied by Diſtreſs and Sale, *&c.* and where the Law gives a Diſtreſs for a publick Benefit, the Officer may ſell. *The King* againſt *Speed*, 1 *Salk.* 379. See *Certiorari.*

He who ſteals tame *Deer*, knowing them to be tame, is guilty of Felony. 2 *Inſt.* 201.

At a Juſtice-Seat for the Foreſt of *Windſor* one *Newſham* was convicted, and fined 5 *l.* for concealing the killing a Stag by another Perſon. *W. Jones*, 275.

The Defendant was a Juſtice of Peace for the County of *Bucks*, and the Court having granted an Information againſt him for harbouring of *Deer-ſtealers*, Mr. Attorney General moved, that it might be tried at the Bar of this Court; and ſaid, that it had been done before in Caſes of this Kind, and produced an Affidavit of the Defendant's having an Eſtate of 700 *l. per Ann.*

The Defendant's Counſel oppoſed the Motion, upon Affidavits that he had a large Family, and was not able to be at the Expence of

trying it in this Manner, and that ſeveral of his Witneſſes were old and infirm, and not able to travel: But by the whole Court a Trial at Bar was ordered, for they held that this was ſo very great an Offence that it required the moſt publick Examination. *Mich.* 12 *Geo.* 1. *Rex* v. *Johnſon*, *M. S. Rep.*

If an Offender for Deer-ſtealing be but once convicted, and hath Goods only ſufficient to ſatisfy Part of the Sum forfeited, his Goods in ſuch Caſe cannot be taken, but he muſt be impriſoned for a Year and ſet in the Pillory: But in caſe he is twice convicted, and has Goods ſufficient to ſatisfy one Conviction but not both, he ſhall pay one, and ſuffer corporal Puniſhment for the other. 2 Ld. *Raym.* 1195.

The Deſcription of a Place *where Deer have been uſually kept* in 3 *W. & M. c.* 10. does not refer to the Words Foreſt, Chaſe, *&c.* The The Caſe was this: There were five ſeveral Convictions for *Deer-ſtealing* returned, four of which being either for killing, or aiding in killing *Deer*, in *Waltham* Foreſt, had no material Objections made to them; but as to the fifth, which was for *Deer-ſtealing* in a *Purlieu* of the Foreſt, objected, that it was not averred, that *Deer* were uſually kept in the *Purlieu*, but only that they were uſually kept in the Foreſt; whereas by 3 *W. & M. c.* 10. that ſeems to be required. The Clauſe is, 'If any Perſon ſhall 'unlawfully courſe, *&c.* any Red or Fallow 'Deer in any Foreſt, Chaſe, *Purlieu*, Paddock, 'Wood, Park, *or other Ground incloſed, where* 'Deer *have or ſhall be uſually kept*, without the 'Conſent

'Conſent of the Owner or Perſon chiefly in-'truſted with the Cuſtody thereof, he ſhall for-'feit, *&c.*' Anſwered that ſuch Averment could not extend to a *Purlieu*; for 4 *Inſt.* 303. deſcribes it as a Place where by Law *Deer* cannot be kept, it being diſafforeſted as well with regard to all others as the Owner, and the Oath of the Ranger is to drive Deer out of the *Purlieu* into the Foreſt, *Manwood* 292. Secondly, The Averment as to Foreſts, Chaſes, and *Purlieus*, is not made neceſſary by the Act; for the Words, *where* Deer *are uſually kept*, extend only to Grounds incloſed; elſe the Words *other Ground* will make it neceſſary to aver that the Foreſt, *&c.* was incloſed, which is not the Caſe in any Part of *England*. And *per Curiam*, the Anſwer is right in both Reſpects. Another Objection was, that it did not appear, but that the Defendant was Owner of the *Purlieu*; in which Caſe he had a Right to chaſe the *Deer* off his Ground. *Sed per Curiam*, That would be Matter of Defence, and ſhould be ſhewn on his Part, according to the Reſolution in the Caſe of the King v. *Bryan**. So the Conviction was confirmed. *M.* 13 *Geo.* 2. *Dominus Rex* v. *Calcutt & Monk*, 2 *Str.* 1119.

On a Conviction the Queſtion was, whether he who lent Dogs to another to hunt, was aiding and aſſiſting therein; to wit, in the hunting: And by the Opinion of three Judges he was; but *Holt Ch. J.* was of a contrary Opinion, for this being a penal Law, ſhall be conſtrued ſtrictly; and if ſo, then he who lent the

* 2 *Str.* 1101.

Dogs could not be aſſiſting in the Act of hunting, and ſo not within the Words of the Statute, *aiding or aſſiſting therein* *, tho' he might be *aſſiſting thereunto*, 2 *Salk.* 542, 543.

Defendant being brought up from *Newgate* by *Habeas Corpus*, it appeared upon the Return, that he was committed for *Deer-ſtealing*, as the Statute 3 & 4 *W.* & *M. c.* 10. directs, not having ſufficient Diſtreſs, and that this was done by one Juſtice under *Stat.* 5. *Geo.* 1. †—Two Exceptions were taken to the Warrant. 1. Becauſe it does not appear that the Conviction was ever confirmed in this Court, or that the Rule for Confirmation was delivered to the Juſtice; and the Words of the Statute are, 'That *after* the 'Confirmation of any Conviction, and *deliver-* 'ing the Rule to the Juſtice, it ſhall and may be 'lawful, &c.' Now this Statute gives the Juſtice a Juriſdiction after Confirmation which he had not before, and therefore he ought to ſhew every thing requiſite to found his Juriſdiction. The Word *after* makes what comes under it to be in the Nature of a Condition precedent, and imports ſomething previous to found the Juriſdiction. 2. The Juſtice only ſays, that it has been certified to him by the Conſtable, that there was *no ſufficient Diſtreſs*, whereas there ought to have been a Warrant to levy, and a Return to that, that there was no Diſtreſs: It may be the Conſtable only told him ſo. But *per Cur.* the Warrant is well enough; for the Word *certified* imports it to be in a legal Manner. And

* See *Stat.* 3 *W.* & *M. c.* 10.

† *C.* 15. *S.* 2.

as to the other Objection we take Notice of our own Records, and by them it appears that the Conviction is confirmed: And the Statute does not give the Juſtice a new Juriſdiction, but only revives his old one, which was ſuſpended by the *Certiorari*. And the Defendant was remanded. *Hil.* 6 *Geo.* 1. *Dominus Rex* v. *Whitlock*, *Str.* 263.

Deer-feld, A Park or *Deer-fold*. Stabulum.

Deer-hays, Are great Nets made of Cords to catch *Deer*.

By *Stat.* 19 *H.* 7. *c.* 11. 'None ſhall keep 'any *Deer-hays* or Buckſtalls, ſave in his own 'Foreſt or Park, in Pain to forfeit for every 'Month 40 *s.* Any two Juſtices of Peace in 'Seſſions may examine the Offenders, and 'commit them to Priſon till they have ſatis-'fied the Forfeiture, whereof the ſaid Juſtices 'are to have the tenth Part.'

Der. The Names of Places beginning with this Word, ſignify, that formerly wild Beaſts herded there; it comes from the Sax. *Deor*, *Fera*.

Deſcription. Exception was taken to an Indictment of Treſpaſs for entring into his Cloſe, called *South-Kelſey* Warren, and killing two Conies, Price 10*d.* againſt the Form of the Statute; and it was quaſhed, becauſe this is but a *Deſcription* of the Place, and no poſitive Affirmation that it is a Warren. 2 *Keb.* 389. *The King* againſt *Smith*.

Diſforeſt, Is to diſplant or cut down the Trees of a Foreſt.

Diſpark. A *modus decimandi* for a Park; Preſcription for two a Year, and a Shoulder of every third Deer killed in the Park, in Conſideration of all Tithes in the ſaid Park. The Defendant denied the Preſcription, and pleaded, That the Park is *Diſparked*, and turned into arable Land. *By the Court*, It yet remains a Park *in Form*, and the *Diſparking* the Park of the Deer was not any *Diſparking* of the Park, ſo as to take away the Preſcription; but if a Man doth pull down his Park-Pales, the ſame is a *Diſparking* without any Seizure of the Liberty into the King's Hands, by a *Quo Warranto*. *Hob.* 39. *Godb.* 237.

If a Man grants the Cuſtody of his Park, he may nevertheleſs *Diſpark* it; but if he leaſe his Park he may not *Diſpark* it. *Dyer* 17.

The King may *diſpark* his Park, and by his *Diſparking* the Office of Keeper is gone; but if there be an annual Fee, that remains, be he diſcharged, or the Park *diſparked*. *Hutton* 87. *Sir Charles Howard*'s Caſe, 1 *Cro.* 59.

Diſtreſs. If any of the Officers of the Foreſt, or others, who ought to appear at the Court of *Swainmote*, make Default, the ſame ſhall be inrolled in the Rolls of the Court, and the Defaulters ſhall be amerced, for which Amerciament the chief Warden of the Foreſt, his Lieutenant, or the Beadle, may *diſtrain* on any Lands within the Foreſt. *Manwood* 99, 100.

If no *Diſtreſs* can be found in the Foreſt, it ought to be certified by the proper Officer to the chief Juſtice in Eyre, and upon a *Teſtatum* there, that

that ſuch a Perſon, who ought to appear, did make Default, and was amerced for the ſame, and that he had not any Goods or Lands in the Foreſt that he might be diſtrained, but that he hath Lands out of the Foreſt, and in ſuch County; then the Juſtices of the Foreſt may cauſe a Precept to be directed to the Sheriff of the County out of the Foreſt, to levy the Amerciament. *Manwood* 101. *Heſket* 37.

If the Officer coming to *Diſtrain*, is prevented by the Owner of the Cattle, by conveying them out of the Foreſt, or otherwiſe; in ſuch Caſe, though the Officer freſhly purſue them, yet he cannot lawfully take them, being out of the Bounds of the Foreſt; but if ſuch Cattle had once been *diſtrained* for the Amerciament, and then the Owner had by Force taken them away, and driven them out of the Foreſt, in ſuch Caſe he may *retake* them in any Place out of the Foreſt. *Manwood* 101.

Doe, Is the ſecond Beaſt of the Chaſe, and is called the firſt Year a *Fawn*, 2d a *Pricket's-Siſter*, 3d a *Doe*. The Seaſon begins on *Holy-Rood-Day*, and laſteth till *Candlemas*.

Dogs. The Laws of the Foreſt do ſo much regard the neceſſary Uſe of *Dogs*, for the Safety of Mens Goods and Houſes who live within the Boundaries, that certain *Dogs* are ſuffered to be kept therein by any Perſon whatſoever: But ſome Sorts are not ſuffered to be kept there, but only by particular Men. *Manwood* 107.

Maſtiffs expeditated, and *little Dogs*, may be kept in a Foreſt; but no other *Dogs* without a good

good Claim; as for *Greyhounds*, it was unlawful to keep them from the very Beginning of the Foreſt-Laws, they being prohibited by the 31ſt of the Laws of *Canutus*. *Manwood* 110, 111, 401.

By the *Aſſizes and Cuſtoms of the Foreſt*, *Artic.* 17. 'Of theſe which claim to have Privileges, 'as *Dogs* unlawed, and *Greyhounds*, within the 'Bounds of the *Foreſt*, there ſhall be nothing 'done to them without our Lord the King's 'Warrant, or his Juſtices.' By which it appeareth, That he who hath a lawful Claim, by good Title, may keep *Maſtiffs*, in a Foreſt, *unexpeditated*, and *Greyhounds* alſo; but ſuch a Claim muſt be by Virtue of a Grant from the King, rather than by Preſcription: But *Quære*. *Manwood* 110, 411.

By **Stat.** 23 *Eliz. c.* 10. 'If any manner 'of Perſon ſhall hawk or hunt with *Spaniels* in 'any Ground where Corn or other Grain ſhall 'then grow, (except in his own Grounds) at 'ſuch Time as any eared Corn or Grain ſhall 'be growing thereon, and before it be ſhocked 'or cocked, and be thereof convicted at the 'Aſſizes, Seſſions or Leet; he ſhall forfeit '40 *s.* to the Owner of the Corn; and if not 'paid in ten days, he ſhall be impriſoned for 'one Month. And any Juſtice may examine 'the Offender, and bind him over to appear 'at the next Seſſions to anſwer the Offence, 'and to pay the Penalty, or receive the Puniſhment.'

By

By **Stat.** 5 *Ann. Sect.* 2. *c.* 14. * 'If any 'Perſon not *qualified* ſhall *keep or uſe* any *Grey-'hound*, *Lurcher*, *Setting-Dog*, *Hays*, *Tunnels*, or 'any Engine to kill and deſtroy Game, and 'ſhall be thereof convicted, on the Oath of 'one *credible Witneſs*, † before one Juſtice of 'Peace where the Offence is committed, he 'ſhall forfeit 5*l.* one Half to the Informer, 'the other to the Poor of the Pariſh; to be 'levied by Diſtreſs and Sale of Goods by the 'Warrant of the Juſtice before whom convict-'ed; and *for want of ſuch Diſtreſs, to be ſent 'to the Houſe of Correction* ‡ for three Months 'for the firſt Offence, and every other Offence 'four Months.'

Queen and *Green*, *Eaſter* 13 *Ann.* The Defendant was convicted by two Juſtices *(one ſufficient)* on this Stat. and committed for want of *Diſtreſs*, *till delivered by due Courſe of Law*; this makes the Commitment *void*; for the Time of Impriſonment is directed by the Act, and it ought to have been for that Space of Time, and not a General Concluſion, therefore quaſhed.

* By Stat. 9 *Ann. c.* 25. this Act is made perpetual. See Tit. **Guns**, p. for a Caſe on this Act.

† A Conviction was quaſhed, becauſe the Informer was the Witneſs; diverſe Convictions having been quaſhed for the ſame Reaſon before. *M.* 2 *Geo.* 2. *King* and *Stone*, Ld. *Raym.* 1545. The ſame adjudged in the Caſe of *K.* and *Blaney*, *T.* 11 *Geo.* 2. *Andr.* 240. A Conviction for Deer-ſtealing quaſhed, becauſe the ſame Perſon is both Informer and Witneſs, and is intitled to a Part of the Penalty. *T.* 6 *Geo.* 1. *Dominus Rex* v. *Tilly*, 1 *Str.* 316.

‡ See *Hill* and *Eateman*.

By

By **Stat.** 5 *Geo.* 1. *c.* 11. 'If any Perſon, 'not qualified by Law, or not truly and pro-'perly a Servant of the Lord or Lady of a 'Manor, or not immediately appointed to kill 'the Game for their ſole Uſe, under Colour of 'any Deputation from any Lord or Lady, ſhall 'keep or uſe any *Greyhounds*, *Setting-Dogs*, or '*Lurchers*, to kill and deſtroy the Game, he 'ſhall incur ſuch Pains and Forfeitures, as by 'the Statute 5 *Annæ* laſt mentioned.'

N. B. *There are ſeveral other* Statutes *relating to* Dogs; *but they not properly coming under this Head, I therefore refer the Reader to the Table.*

A Declaration for keeping and uſing *Greyhounds*, not being qualified.

Somerſet, to wit. WIlliam Brooks, *Eſq*; *who as well for himſelf, as the Poor of the Pariſh of* T. *in the ſaid County, in this Behalf proſecutes, complains of* Johnſon Trevor *in the Cuſtody of the Marſhal of the* Marſhalſea *of the Lord the King, before the King himſelf, of a Plea, that he render to him and to the ſaid Poor of the ſaid Pariſh of* T. *five Pounds, which to the ſaid* William *and to Poor of the ſaid Pariſh he owes, and unjuſtly detains; for that*, to wit, *that whereas the ſaid* Johnſon 21*ſt Day of* September *in the ſixth Year of the Reign of the ſaid Lord* George *the Second, now King of* Great Britain, *and ſo forth, at the ſaid Pariſh of* T. *in the County aforeſaid, uſed two* Greyhounds *to kill and deſtroy Game, againſt the Statute in that Caſe lately made and*

and provided; he the said Johnson, *by Force of the Laws of this Realm, not being qualified so to do; by which, and by Force of the Statute in that Case lately made and provided, the said* Johnson *forfeited the said Sum of five Pounds, and by Force of the Statute in that Case lately made and provided, the Action accrued to the said* William, *as well for himself, as for the said Poor of the said Parish of* T. *in the County aforesaid, to have and receive from the said* Johnson *the aforesaid five Pounds: Yet the said* Johnson, *although often requested, the said five Pounds to the said* William, *who as well, and so forth, hath not rendred, but the same to the said* William, *who as well, and so forth, to render hath hitherto altogether refused, and still doth refuse; wherefore the said* William, *who as well, and so forth, said he is prejudiced, and hath Damage to the Value of ten Pounds; And for that, as well for himself, as for the said Poor of the Parish of* T. *he brings his Suit.*

A Licence to hunt, &c. and to seize *Dogs, &c.*

TO all *Christian People to whom this present Writing shall come, I* H. H. *of,* &c. *Lord of the Manor of* H. *send Greeting:* **Know ye,** *That I the said* H. H. *have given and granted,* **And** *do hereby give and grant, unto* W. P. *of,* &c. *full Liberty and Authority to hunt at all seasonable Times hereafter, for the Space of five Years next ensuing, within the said Manor of* H. *in the County aforesaid, and upon the Lands and within the*

the Limits thereof, in the ſame Manner as I myſelf might or could do, without any Let, Denial or Diſturbance whatſoever: **Giving likewiſe** *hereby full Power and Authority to the ſaid* W. P. *and his Aſſigns, from Time to Time during the ſaid Term, to ſeize all* Spaniels *and* Dogs *whatſoever, of any Perſon or Perſons who are prohibited by the Laws or Statutes of this Realm to keep the ſame, and who ſhall, during the Term abovementioned, hunt within the ſaid Manor without his Conſent, and the ſaid* Dogs *to keep and detain to and for my Uſe.* Given *under my Hand and Seal,* &c.

A Warrant to a Game-keeper, or any other Perſon, to ſearch for *Dogs*.

On 22 & 23 *Car.* 2. *c.* 25.

To the Conſtable of, *&c.* and to *W. P.* of, *&c.* in the County, *&c.* Yeoman.

Somerſet, to wit, } **These are** *to require you, or either of you, to ſearch in the Day-time the Houſes, Outhouſes or Places of any Perſon or Perſons within,* &c. *whom you ſhall have juſt Occaſion to ſuſpect, or be informed to keep Setting-Dogs, Greyhounds, Lurchers, Tumblers, or other* Dogs, *to deſtroy Partridges, Hares or Conies, not being qualified by Law to keep the ſame; and the* Dogs, *which you ſhall find in the Poſſeſſion of ſuch Perſon or Perſons, to ſeize and keep to and for the Uſe of the Lord of the Manor where they ſhall be taken:* **But** *you are not to ſearch*

search the House of any Person who hath an Estate of 100 l. *a Year, a Lease for any long Term of Years of the clear yearly Value of* 150 l. *or of him who is Son and Heir apparent of an Esquire, or any Person of higher Degree, or of those who are Keepers or Owners of Forests, Chases, Parks or Warrens*; **And** *you are to certify me with all convenient Speed what you do in the Premisses.* **Given,** &c.

Law Case.

In Trespas the Plaintiff declared, that he was possessed of a *Greyhound ut de bonis suis propriis* [*as of his own proper Goods*]; and that on such a Day he lost it, and that afterwards, in Consideration thereof, the Defendant promised to deliver the said *Greyhound* to the Plaintiff; and upon a Demurrer to this Declaration, it was objected that this Action would not lie, for the *Dog* being out of the Possession of the Plaintiff, he had no Property in him, because he was *feræ naturæ* [*of a wild Nature*] and that by a Grant of *omnia bona & catalla* [*of all Goods and Chattels*] a Dog will not pass. *Incledon* against *Higgins*, 3 *Leon.* 219. *Cro. El.* 125. S. C. *Owen* 93. *Hetly* 80.

But *Quære*, for 'tis every Day's Experience, that he is *domitæ naturæ*; a Beast brought up and tamed by the Industry of Man, which is so universally known, that the Plaintiff need not aver in his Declaration that the *Dog* was tame, because it shall be so intended, and it being a Beast of Use to catch the Game, for those

thoſe who are qualified to keep them; and therefore the Law regards it, as it doth many other *Dogs*, of which there are four Sorts, *(viz.) a Maſtiff*, *a Hound*, which comprehends a *Greyhound*, a *Spaniel* and a *Tumbler*; and *Tanfield* (who was afterwards Chief Baron) in arguing this Caſe tells us, that he had ſeen a Precedent *Anno* 13 *H.* 7. *Rot.* 35. where in an Action of Aſſault and Battery, the Defendant juſtified that *T. S.* was poſſeſſed of a *Dog ut de bonis ſuis propriis*, and delivered it him to keep, and that the Plaintiff would have taken it from him (the Defendant); and thereupon he reſiſted him (the Plaintiff) and beat him in Defence of the *Dog*, *&c.* and that that Hurt was of his own Wrong; and that upon a Demurrer to this Plea the Defendant had Judgment; which ſhews, that a Man may have a Property in a *Dog*, when 'tis lawful for him to juſtify the Beating another Man in Defence of it. *Dyer* 306.

In Treſpaſs the Plaintiff declared, that *T. S. Vi & Armis*, at ſuch a Place and in ſuch a Year, took and led away *an Hound*; and upon a Demurrer to the Declaration, it was adjudged that the Action did lie. *Edwards* againſt *Ingleton*, *Hob.* 283.

Treſpaſs was brought for taking away a *Blood-hound*; upon Not guilty pleaded, the Plaintiff had a Verdict, and 10 *l.* Damages. *Cro. Eliz.* 125, 126.

Trover was brought for a *Spaniel Dog*; and upon a Demurrer to the Declaration it was held,

held, that the Action was well brought. *Pells* againſt *Lemon*, *Hob.* 363.

Treſpaſs for taking away a *Greyhound*; the Defendant pleaded, that the *Dog* was courſing a Hare on his (the Defendant's) Lands, and thereupon he took and led him away; and upon a Demurrer to this lea it was held frivolous; which ſhews that Treſpaſs will lie for taking a *Greyhound*; and in this Caſe it was the Opinion of the Court, that an Action of Treſpaſs will lie for killing a *Maſtiff*. *Athill* againſt *Corbett*, 2 *Cro.* 463.

Treſpaſs was brought againſt the Defendant for killing *two Greyhounds*; who juſtified, for that the *Greyhounds* did chaſe a *Deer* in his (the Defendant's) Park, whereupon to prevent further Miſchief he killed them; the Plaintiff replied, that the *Deer* was out of the Defendant's Park, and upon his (the Plaintiff's) Lands, and that he let looſe the *Greyhounds* at the *Deer* to chaſe him off his Lands, and that the *Greyhounds* purſued the *Deer* into the Park, and there killed him; and upon a Demurrer to this Replication, it was held ill; becauſe the Plaintiff did not ſet forth, that he endeavoured to ſtop the *Dogs* before they came into the Park; but then it was inſiſted that the Plea was naught, becauſe though it was unlawful to chaſe a *Deer* in the Defendant's Park, yet he could not juſtify the Killing the *Dog*; but adjudged that he might. *Barrington* againſt *Turner*, 3 *Lev.* 28.

In *Treſpaſs* the Plaintiff declared, that the Defendant beat and killed his (the Plaintiff's) *Maſtiff*,

Maſtiff, &c. the Defendant pleaded in Bar, that the Plaintiff ſuffered his *Maſtiff* to go in the Street without a *Muzzle*; and thereupon he ran upon another *Dog* of one *Ellen Bagſhaw*, which he did bite, (which *Dog* was kept by the ſaid *Ellen* for the better Security of her Houſe), and that the Defendant as her Servant *killed the Maſtiff* leſt he ſhould do any further Damage; and upon a Demurrer to this Plea it was adjudged ill, becauſe a *Maſtiff* is a valuable *Dog*, and therefore the Defendant could not juſtify killing it without a reaſonable Cauſe; 'tis true he might juſtify the Beating it to prevent farther Miſchief, but not to *kill it*, unleſs it could not be otherwiſe prevented; but by this Plea it doth not appear but that the Defendant might have ſaved his Miſtreſs's *Dog* without killing the *Maſtiff*; and that was the Caſe of *Wadhurſt Damm*, where the Defendant juſtified the Killing a *Maſtiff*, becauſe he could not be otherwiſe prevented from doing Damage in the Warren. *Wright* againſt *Ramſcot*, 1 *Saund.* 84. *Sid.* 336. S. C. *Lev.* 216. S. C. 3 *Salk.* 139.

Trover, &c. and amongſt other Things *de ſex Catulis*; after a Verdict for the Plaintiff, upon Not guilty pleaded, it was moved in Arreſt of Judgment, that *Catulus* ſignified *Whelps* of any *Species*, as of *Foxes*, *Bears*, &c. but adjudged, that it ſhall be intended *Dog-Whelps*; and that a Man may have a Property in a *Dog*. 3 *Lev.* 326. *Chambers* againſt *Warkhouſe*.

The Defendant ſold a *Lurcher* to the Plaintiff, who promiſed to redeliver him to the Plaintiff, as often as he ſhould return to the Defen-

dant, which he had not done; and it was held that the Action was well brought. *Elliot* againſt *Richardſon*, 1 *Keb.* 608.

In an Action on the Caſe the Plaintiff declared, that the Defendant in ſuch a Pariſh *knowingly did keep a Dog*, which uſually did bite Men; upon Not guilty pleaded the Plaintiff had a Verdict, and 100 *l.* Damages; and it was moved in Arreſt of Judgment, that the Declaration was ill, becauſe the Plaintiff did not ſet forth, that the Defendant did know the *Dog* was accuſtomed to worry Men; for the Word *Knowingly* in this Declaration muſt relate to the Keeping the *Dog*; and ſo is the Caſe of *Kinion* and *Davis*, *Cro. Car.* 350, 487. in Point, which is very true; but the Rule in that Caſe was made without any Debate of the Point; and it was, that the Defendant ſhould have Judgment, unleſs Cauſe, *&c.* ſo that it might be the Negligence of the Plaintiff in that Caſe that the Rule did ſtand; therefore in the principal Caſe there was a contrary Judgment, and that it would be impertinent, that the Word *Knowingly* ſhould only relate *to the Keeping the Dog*, becauſe he who keeps a *Dog* muſt know that he keeps it: The Judgment was affirmed. *Cropper* againſt *Matthews*, *Sid.* 127.

Caſe, *&c.* againſt the Defendant for keeping a Maſtiff, *knowing the Dog* was accuſtomed to *bite Hogs*; upon a Demurrer to the Declaration it was adjudged, that this Action would not lie, becauſe 'tis not only common, but in many Caſes neceſſary, for *Dogs* to *bite Hogs*; and

and therefore not like the Caſe where an Action is brought for keeping a *Dog*, which uſually did bite Sheep. *Dyer* 25.

The Defendant was convicted upon **Stat.** 5 *Ann. c.* 14. for keeping a *Greyhound*, and *killing four Hares*, not being qualified, *which Conviction was upon his own Confeſſion*; now by the ſaid Statute the Forfeiture of 5 *l.* relates to the Conviction, ſo that if 'tis not made according to the Statute, nothing is forfeited; now it was inſiſted that the Conviction in this Caſe was not according to the Statute, becauſe that directs it ſhould be *by the Oath of one credible Witneſs before one Juſtice*, but here it was *by his own Confeſſion*; beſides the Juſtice, before whom the Party was convicted, having no Power but what he derives from the Statute, for that Reaſon it ought to be purſued; but adjudged, that the *Confeſſion of the Offender* is the ſtrongeſt Evidence againſt himſelf; and though 'tis not within the Letter, yet 'tis within the Reaſon and Meaning of the Statute; therefore where the Conviction is upon a ſtronger Evidence than required by the Statute, it muſt be good. *The King* againſt *Gage*, 9 *G. B. R. M. S. Rep.* — *Str.* 546. S. C. ſtates it thus. The Defendant was convicted on 5 *Ann. c.* 14. for uſing a *Greyhound* in killing four Hares, *per quod* he forfeited 20 *l.* *Reeve* excepted to the Conviction, that the Act not only gives the Juſtices Juriſdiction to convict upon the Oath of one or more credible Witneſſes, whereas this was upon his own Confeſſion, which he inſiſted the Juſtice had no Power to take; and it follows in the Act, that the

the Perſon *ſo* convicted ſhall forfeit, which Word *ſo* is relative to the former Method, by Oath of one or more credible Witneſſes: And he put the common Caſe upon the Removal of a poor Perſon, which muſt be upon the Complaint of the Churchwardens or Overſeers, the Juſtices having Juriſdiction in that Manner. *Sed per Curiam*, (*præter Eyre* J.) The Conviction muſt be confirmed. The Intent of mentioning the Oath of one Witneſs was only to direct the Juſtices, that they ſhould not convict on leſs Evidence: Suppoſe the Confeſſion had not been before the Juſtices, but before two Witneſſes who had ſworn it, that would be convicting him on the Oaths of Witneſſes, and yet the Evidence would not be ſo ſtrong as this. By the Civil Law Confeſſion is eſteemed the higheſt Evidence, and in ſome Caſes, though there are one hundred Witneſſes, the Party is tortured to confeſs. Here the Juſtices had a better Evidence than the Oath of any ſingle Witneſs; and it is a monſtrous thing to ſay, that a better Sort of Evidence ſhall not do. *Eyre* J. *contra*, there was no Occaſion to carry this Act ſo far, the 22 & 23 *Car.* 2. *c.* 26. giving Power to convict for this Offence upon *Confeſſion*, with a different Penalty, and he ſaid that it ought to have been a Conviction upon that Statute. The Conviction was confirmed.

Queen and *Cobbold*, *Mich.* 12 *Ann.* Defendant was convicted upon 5 *Ann. c.* 14. for keeping a *Greyhound*, not being qualified. Objection, that the Conviction was upon the ſingle Teſtimony of the Informer; *Per Cur.* 'Tis a

fatal Objection; for ſhould the Informer be allowed to be a ſufficient Evidence, it would induce profligate Perſons to commit Perjury for the ſake of the Reward, more eſpecially ſince they cannot be convicted of it; when the Statute ſays a credible Witneſs, 'tis ſuch a one as is allowed *per Legem.*

In *Treſpaſs* the Defendant pleaded, that the Plaintiff's Sheep were in his (the Defendant's) Ground, and that he chaſed them from thence with his *Dog*, which purſued them into the Plaintiff's Ground adjoining, and that he immediately chid his *Dog*, *quæ eſt eadem tranſgreſſio, &c.* [*which is the ſame Treſpaſs*]; and upon a Demurrer to this Plea, it was objected, that though 'tis lawful to chaſe Cattle out of his Ground with a *Dog*, yet he ought not to exceed that Authority which he hath by Law, (*viz.*) (to purſue them into another Man's Ground), for if he doth, 'tis void in all; but adjudged, that the Plea was good, for 'tis the Nature of a *Dog* not to be ruled on a ſudden; therefore the Defendant had not abuſed that Authority, which he lawfully had. *Miller* againſt *Cowdry*, *Poph.* 161.

In an Action of Debt, upon the Statute 5 *Ann.* for keeping and uſing a *Dog* to kill the Game, it is neceſſary to ſhew what ſort of *Dog* it was; for a *Maſtiff-Dog* or a *Lap-Dog* may chance to kill Game, and the Statute mentions only *Greyhounds*, *Setting-Dogs* and *Lurchers*. See the *Table*.

Conviction before one Juſtice for keeping a *Greyhound*, reciting that one *William Tonne* came and

and informed, that the Defendant, being a Perſon *not qualified* to keep a *Greyhound*, did nevertheleſs keep one at *A.* and another at *B.* and with them killed one Hare at *A.* and two at *B.* and that he being ſummoned did appear; and being aſked what he had to ſay, offered nothing in excuſe, and *ideo* the Juſtice convicted him. The Conviction was quaſhed, becauſe the Witneſs ſwore *generally* that the Defendant was not qualified, and had taken upon himſelf to judge of the Qualifications. *M.* 4 *Geo.* 1. *Dominus Rex* v. *Marriott.* 1 *Str.* 66. See 10 *Mod.* 26.

Conviction on *Stat.* 5 *Ann. c.* 14. for *keeping a Lurcher* to deſtroy Game, not being qualified, good, without ſhewing Defendant made *uſe of the Dog to deſtroy Game.* For *per Cur'* the Statute is in the Disjunctive, *keep or uſe*, ſo that the bare keeping a *Lurcher* is an Offence, and ſo it was determined in the Caſe of the *King* v. *King*, * *E.* 3 *Geo.* 1. *B. R.* which was a Conviction for *keeping a Gun*, and it was not doubted by the Court, whether the *Keeping* was not enough to be ſhewn; but the only Queſtion they made was, whether a *Gun* was ſuch an Engine as is within that Statute; and in that Caſe a Difference was taken as to *keeping a Dog*, which could only be to deſtroy the Game, and the *keeping a Gun*, which a Man might do for the Defence of his Houſe. *Hil.* 8 *Geo.* 1. *Dominus Rex* v. *Tiler.* 1 *Str.* 496.

* In this Caſe *Parker*, Ch. J. ſaid, that walking about with Intent to kill Game, is Evidence of *uſing* the Inſtrument for that Purpoſe. *Seſſ. C.* V. 1. 88.

Debt on 8 *Geo.* 1. *c.* 13. for the Penalty of 30*l.* for uſing a *Hound* to deſtroy Game. After a Verdict for the Plaintiff Judgment was arreſted, for 5 *Ann. c.* 14. has not the Word *Hound*, and the Words *other Engines* come after *Nets*, &c. and are applicable only to inanimate Things; and this being a penal Law, cannot be extended. The *Stat.* 22 & 23 *Car.* 2. *c.* 25. has indeed general Words, *or any other Dogs to deſtroy Game*, but this is not a Conviction on that Statute. *H.* 13 *Geo.* 2. *Hooker* v. *Wilks*, 2 *Str.* 1126.

Dove and **Dove-cote.** There are ſeveral *Statutes* made for the Preſervation of *Doves*; *and which are inſerted under other Heads, for which ſee the* Table.

A Declaration for taking *Doves.*

Huntingdon, to wit. } T. M. *Complains of* E. F. *in the Cuſtody of the Marſhal and ſo forth, for that he the ſaid* E. *with Force and Arms, the third Day of* September, *in the ſeventh Year of the Reign of our Sovereign Lord* George *the Second, now King of* Great Britain, *the Cloſe and Houſe of him the ſaid* T. *at* G. *in the ſaid County, did break, and then and there* 144 Doves *of the* Dove-cote *of him the ſaid* T. *with Nets and other Engines did take, to the Value of* 50*l.* *by which Taking he the ſaid* T. *his Flight of his* Doves *aforeſaid wholly loſt, and other Enormities to him did, againſt the Peace of the ſaid Lord*

the

the now King, and to the Damage of the ſaid T. *ten Pounds; and therefore he brings his Suit.*

An Indictment for erecting a *Dove-cote*.

Huntingdon, to wit. } THE Jury, &c. *That* A. B. *of* G. *in the ſaid County of* H. *Yeoman, not being Lord of the Manor of* G. *aforeſaid, nor Rector of the Pariſh-Church of* G. *aforeſaid* (ſuch a Day and Year, *&c.*) *at* G. *aforeſaid in the County aforeſaid, a* Dove-cote *did erect or cauſe to be erected, to the common Nuſance of the Subjects of our ſaid Lord the King, and alſo againſt the Peace of our ſaid Lord the King, his Crown and Dignity.*

Law Caſes.

Doves in a *Dove-houſe*, *young* and *old*, ſhall go to the *Heir*, and not the *Executor*. 1 *Inſt.* 8.

A Freeholder erected a *Dove-cote* on his Freehold Land, where there was none before, and ſtored it with *Pigeons*; this was *preſented at the Leet for a Nuſance*, and the Defendant was ordered to remove it by ſuch a Day; which not being done, he was amerced to 20*s.* and the Lord of the Leet diſtrained for the ſame.

And firſt, The Court doubted whether this could be preſented as a *Nuſance*; and my Lord *Coke*, who was now Chief Juſtice, ſaid, that there was no Reaſon why a Lord of a Manor ſhould have a *Dove-cote* more than another Freeholder; and it being inſiſted, that this is an Offence *puniſhable in the Leet*, becauſe by Stat. 18 *Ed.*

18 *Ed.* 2. reciting the Articles of the Charge at a Leet, it appears, that one of thoſe Articles is to make Inquiry of *Dove-cotes* erected without Licence; my Lord *Coke* thereupon aſked a very material Queſtion, *(viz.) Who ſhall give ſuch Licence?* The Lord of the Manor cannot; for if 'tis a *Nuſance*, he himſelf cannot erect a *Dove-cote*; and the King cannot, becauſe 'tis a *Nuſance*; but in the principal Caſe, the Preſentment was quaſhed, becauſe it did not ſet forth, that the Building the *Dove-cote* was *ad commune nocumentum Ligeorum Domini Regis*, [*to the common Nuſance of his Majeſty's Liege Subjects*]. *Pratt* againſt *Sterne*, 2 *Cro.* 382. *Godb.* 259. S. C.

In *Treſpaſs* upon a Demurrer the Caſe was, The Plaintiff being a Freeholder within the Manor of *Iſleworth* in *Middleſex*, erected a *Dove-cote* on his own Lands, and ſtored it with *Pigeons*, and ſuffered them to fly out, which was preſented at the Leet as a common Nuſance, and a Pain of 10 *l.* was impoſed on him, if he did not remove it before ſuch a Day; which not being done, it was preſented at the next Court, and the Pain thus impoſed was affeered to 8 *l.* and for Non-payment thereof a Diſtreſs was made on his Goods and Chattels; whereupon he gave Bond for the Payment of the Money, and afterwards brought an Action of Treſpaſs for taking and detaining his Cattle, till he entered into the ſaid Bond: The Defendant pleaded ſpecially, and ſet forth all the Matter before mentioned; to which Plea the Plaintiff demurred; and it was adjudged by the whole

Court

Court, that the Erecting a *Dove-house* by a Freeholder on his own Land, and storing it with *Pigeons*, is *not a Nusance inquirable in a Leet*, because 'tis not a common Nusance to all People; for if 'tis any Nusance, 'tis only so to those whose Corn they eat; besides a Man hath *jus proprietatis & privilegii* in *Pigeons*, and both in respect to the Place where they are, *(viz.)* in his *Dove-cote*. *Dewell* against *Sanders*, 2 *Cro.* 490. *Poph.* 141. S. C.

To steal *Wild-Pigeons* in a *Dove-house* shut up, or Hares or Deer in a House, or even in a Park inclosed in such a Manner, that the Owner may take them whensoever he pleases, without the least Danger of their escaping, in which Case they are as much in his Power as Fish in a Pond, or young *Pigeons*, or Hawks in a Nest, *&c.* in taking of which, for the like Reason, it seems to be agreed, that Felony may be committed. *Hawk. P. C.* 1. *B.* 94.

If *Pigeons* come upon my Land, and I kill them, the Owner hath no Remedy against me; though I may be liable to the Statutes which make it penal to destroy them. *Cro. Jac.* 492.

Drifts of the Forests. The *Drifts of the Forests* are said to be when all the Cattle, as well of Commoners as of Strangers, are driven by the Officers of the Forest to some certain Pound or Place inclosed, and the End thereof is threefold, *viz.* 1*st*, to see whether those that ought to Common do Common with such Kind of Cattle as by Prescription or Grant they ought. 2*dly*, If they Common with such Cattle as they ought, whether they do surcharge or no. 3*dly*,

If the Cattle of any Stranger be there which ought not to Common at all.

By **Stat.** 32 *H.* 8. *c.* 13. 'Foreſts, Chaſes, 'and Common Ground ſhall yearly be driven, 'either at *Michaelmas*, or within fifteen Days 'after, by the Keepers and Officers of the Fo-'reſts and Common Grounds, on Pain of 40*s.* 'who have alſo Power by the Statute to drive 'them at any other Time in the Year, as they 'ſhall think fit; and the Owners of thoſe 'Grounds have the like Power.'

Lord *Coke* makes the following Obſervations on this Act: That if the Foreſt is in the King's Hands, the *Drift* muſt be made by all the King's Officers of Attendance in the Foreſt, and by four Men and the Reeve of every Town within the Foreſt. If in a Subject's Hand, then by the Owner or Poſſeſſors, or by the Conſtable, *&c.* And likewiſe in this Statute the Purlieus are included. 4 *Inſt.* 309.

Duck. See **Pheaſant, Wild-Duck.**

Eggs. By **Stat.** 11 *Hen.* 7. *c.* 17. 'None 'ſhall take out of the Neſt any *Eggs* of Falcon, 'Goſhawk, Laner, or Swan, on Pain (being 'convicted thereof before the Juſtices of the 'Peace) of a Year and a Day's Impriſonment, 'and to incur a Fine at the King's Pleaſure, 'to be divided between the King and the 'Owner of the Ground, where the *Eggs* ſhall 'be ſo taken.'

By **Stat.** 25 *Hen.* 8. *c.* 11. 'None, from '*March* 31 to *June* 30, ſhall deſtroy or take 'away the *Eggs* of any Wild-Fowl, upon Pain

'of

'of Impriſonment for a Year, and to forfeit 'for every *Egg* of a Crane or Buſtard ſo taken 'or deſtroyed, 20 *d.* of a Bittern, Heron or Sho-'velard, 8 *d.* and of a Mallard, Teal, and other 'Wild-Fowl (except Crows, Ravens, Boſ-'cards, and other Fowl not uſed to be eaten) '1 *d.* Half to the King and Half to him that 'will ſue by Action of Debt; alſo Juſtices of 'the Peace may determine the ſame, as in Caſes 'of Treſpaſſes.'

By **Stat.** 5 *Eliz. c.* 21. 'None ſhall take 'any Hawk's *Eggs*, on Pain to ſuffer three 'Months Impriſonment, and to be bound with 'good Sureties to his good Behaviour for ſe-'ven Years after, or remain in Priſon till he 'doth.'

By **Stat.** 1 *Jac.* 1. *c.* 27. 'Every Perſon 'convicted by his own Confeſſion, or by two 'Witneſſes upon Oath before two or more Juſ-'tices of Peace, to have taken or deſtroyed the '*Eggs* of Pheaſants, Partridges or Swans, ſhall 'be committed to Priſon without Bail for three 'Months, unleſs he immediately pay to the 'Uſe of the Poor where the Offence is com-'mitted, or he apprehended, 20*s.* for every '*Egg*; and after one Month's Commitment, 'ſhall before two or more Juſtices of Peace be 'bound with two ſufficient Sureties in 20*l.* 'apiece, with Condition never to offend in the 'like again.'

A Warrant against a Person for Destroying of Pheasants *Eggs*.

(On 1 *Jac.* 1. *cap.* 27.)

To *A. B.* the Constable of, &c.

WHereas *it hath been this Day duly proved before us* W. T. *and* J. F. *Esquires, two of his Majesty's Justices of the Peace for the County of* H. *That* A. J. *of* D. *in*, &c. *on or about*, &c. *last past, did take away from and destroy three Pheasants* Eggs *in a Nest at* H. *contrary to an Act of Parliament in that Case made and provided*: **These** *are therefore in his Majesty's Name to command you to apprehend the said* A. J. *and to convey him to the common Gaol of*, &c. *there to be kept safely by the Keeper of the same, for the Space of three Months; except he forthwith pay to the Churchwardens of the Parish of* D. *for the Use of the Poor there, the Sum of* 6*o*s. *according to the Direction of the Statute in that Behalf made and provided.* **Given** *under*, &c. *See* Table.

Ejectment. See *Table.*

Esbrancatura, Cutting of Branches or Boughs in a Forest.

Estovers, Signifies to supply with Necessaries; every Man may take *Estovers* in his own Woods by the View of the Foresters, and not otherwise; and the Foresters must not take any Thing for their View; if they do, 'tis Extortion. *W. Jones's Rep.* 277.

If a Man hath *Eſtovers* allowed for making a Hedge, which Hedge would have laſted two Years, but is burned the firſt Year; in this Caſe, he ſhall not be allowed new *Eſtovers*; and if he take more *Eſtovers* than he ought at one Time, they ſhall be ſeized, and the Party fined. *Itin. Pick. fol.* 3. *Manwood* 388.

If he who hath *Eſtovers* in a Foreſt, make Hurdles of them, and ſell thoſe Hurdles, he is puniſhable. *Manwood* 388.

Expeditating of Dogs. The Dogs which are allowed to be kept in the Foreſt, muſt be ſuch which are not able of themſelves to hurt the Deer; or ſuch which are diſabled, by the Laws of the Foreſt, to hurt them; which *Diſabling* or *Lawing* of Dogs, was called *Hambling* by the ancient Foreſters, but now *Expeditating*; and it was inſtituted for the Quiet and Safety of the Wild-Beaſts, and relates to every Man's Dog who lives near the Foreſt.

By **Chart. Foreſtæ**, *c.* 6. '*Lawing* of Dogs 'ſhall be made in Foreſts from three Years to 'three Years by the View and Teſtimony of 'lawful Men, and not otherwiſe; and he that 'hath not his Dog *lawed* ſhall be amerced 3 *s.* 'alſo no Ox ſhall be taken, for *Lawing* of 'Dogs: And it ſhall be done by the uſual Aſ-'ſize, *viz.* That three Claws of the Forefoot be 'cut off by the Skin. Howbeit, ſuch *Lawing* 'ſhall not be but where it hath been uſed from 'the Coronation of *H.* 2.'

The Regarders of the Foreſt ſhall view all the Maſtiffs in the Foreſt whether they are *Expeditated*, and at the next Swainmote after they have

made their Regard, preſent what Maſtiffs are not *Expeditated*, and who are the Owners; then the Court of Swainmote or Attachments may cauſe all thoſe Maſtiffs to be brought before them, and appoint a Perſon, with Inſtruments convenient for the Purpoſe, to *Expeditate* them according to Law; and then upon ſuch Matter of Record, the Court may award Proceſs to levy the 3*s.* and not before. *Manwood* 114, 119.

Though the Forfeiture for keeping a Maſtiff not *Expeditated*, is no more than 3*s.* yet if the Dog doth hurt or kill a wild Beaſt of the Foreſt, then the Owner is to be puniſhed according to the Quality of that Offence, and above the ſaid Forfeiture. *Ibid.* 119.

By *The Aſſize and Cuſtoms of the Foreſt*, If a Maſtiff be found upon any Deer, and ſhall be *Expeditated*, he whoſe Maſtiff he is, ſhall be quit of the Deed: but if it be not *Expeditated*, the Owner of the Maſtiff ſhall be guilty, as if he had given it with his own Hands; and he ſhall be put by ſix Pledges, whoſe Names ſhall be written, and alſo what Kind of Dog it was.

If the Regarders find and preſent ſuch a Dog kept at or in the Houſe of *D. A.* in the Foreſt, he ſhall not be amerced upon this Preſentment; but if they preſent, that *D. A.* kept the Dog, this is good, and he ſhall be fined the 3*s.* *Manwood* 121.

If a Peer of the Realm, or a Biſhop, is preſented for keeping ſuch a Dog, he ſhall pay only 3*s.* and not according to his Quality; but if a Peer is preſented and indicted before the Juſtices of

of the Foreſt for keeping a Greyhound, and hunting with him there, in ſuch Caſe he may be amerced by the ſaid Juſtices, according to his Dignity and Eſtate. *Ibid.* 122.

In Purlieus or Places deafforeſted, a Man may keep a Maſtiff without being *Expeditated.* 4 *Inſt.* 300.

Felony. In ſome Caſes Offenders in Foreſts may be guilty of *Felony*; as if a Foreſter hath killed a Deer, and leaves it in the Foreſt whilſt he goes to the Lodge for a Horſe, and in the mean Time another Perſon carries it away, this is *Felony*, and the Offender is to ſuffer as in other Caſes of *Felony*. *Manwood* 215.

A Foreſter was indicted for *Feloniouſly* cutting down and carrying away ſeveral Trees; but the Judges would not ſuffer him to be arraigned for *Felony* upon that Indictment, becauſe the Trees which are growing are annexed to the Freehold, of which a Man cannot commit *Felony*; but if they had been cut down by the Owner, and then the Foreſter had carried them away, this had been *Felony*. 12 *Aſſi. Placito* 32. *Manwood* 215.

Where *Felony* is committed in a Foreſt, Hue and Cry may purſue the *Felon* whereſoever he goes, as after a *Felon* at Common Law, till he is apprehended. *Manwood* 216. See the *Table*.

Fence-month. The *Fence-month*, by the ancient Foreſters was called the *Defence-Month*, and is the Fawning Time; during which, Watch and Ward is kept, (ſince the Time of *Canutus*) to defend the wild Beaſts and their young ones from Danger; and every Man is forbidden

forbidden to wander up and down in the Foreſt, or otherwiſe to diſquiet the Deer, and the Foreſters, Verderors, Regarders, Agiſtors and Woodwards, are all to be aſſiſting each other in ſuch Watch and Ward, and the Verderors give a Charge, which ſee in *Manwood* 137. It begins fifteen Days before *Midſummer*, and ends fifteen Days after. 4 *Inſt.* 313. *Manwood* 135, 136.

If any Swine, Goats or Sheep are found in the Foreſt in *this Month*, they are forfeited to the King. *Itin. Lancaſtr. fol.* 7. *Manwood* 136, 139. See the *Table*.

Ferret, Is a little Creature like a Weaſel, uſed in catching Rabbits, for which a Replevin lies. *Cro. Jac.* 463.

Ferry. One *Blagrave* having erected a *Ferry* where there was none before, was fined 5*l.* becauſe the Deer by this Means may be ſtolen, and carried over the Water, ſo as no Bloodhound can follow. *W. Jones's Rep.* 273.

Fiſh. By **Weſtm.** 2. *c.* 47. 'None ſhall 'take *Salmon* * betwixt the eighth of *September* 'and the eleventh of *November*, nor young *Sal-* 'mon with Nets or Engines, at Mill-pools, be- 'twixt the Midſt of *April* and twentieth of 'June, on Pain of having their Nets and En- 'gines burnt for the firſt Offence; for the ſe- 'cond a Quarter of a Year's Impriſonment; 'for the third a Year's, and after to have their

* The Salmon every Year aſcend from the Sea up a River, ſome 4 or 500 Miles perhaps, to caſt their Spawn, and ſecure it in Banks of Sand, until the Young is hatched, or excluded, and then return to the Sea again.

'Puniſh-

'Puniſhment increaſed according to the Treſ-
'paſs. And in Places where freſh Waters be,
'Overſeers of this *Stat.* ſhall be aſſigned and
'ſworn to inquire of the Offenders.'

By **Stat.** 13 *Ric.* 2. *c.* 19. 'No *Fiſher* ſhall
'uſe any Engine by which the Fry of *Fiſh* may
'be deſtroyed, on the Pains mentioned in Sta-
'tute *Weſtm.* 2. *c.* 47.

'*Salmon* in *Lancaſhire* ſhall not be taken be-
'twixt *Michaelmas* and *Candlemas.*'

'Conſervators ſhall be ſworn to ſee this Sta-
'tute obſerved, and the Offender puniſhed.'

By **Stat.** 17 *Ric.* 2. *c.* 19. 'Juſtices of
'Peace ſhall be Conſervators of the Statutes of
'*Weſtm.* 2. *c.* 47. and 13 *Ric.* 2. *c.* 19. and
'ſhall have Power to ſearch all Wears, leſt by
'their Straitneſs the Fry of *Fiſh* may be de-
'ſtroyed.'

'Juſtices of Peace ſhall have Power to ap-
'point and ſwear Under-Conſervators; the ſame
'Juſtices ſhall hear and determine in Seſſions
'Offences of this Kind, and puniſh the Offen-
'ders by Fine and Impriſonment; and half the
'Fine is to go to the Under-Conſervator who
'informs.'

'The Mayor of *London* hath like Power in
'the *Thames* from *Staines* to *London*, and in
'*Medway* as far as the Citizens Grant ex-
'tends.'

By **Stat.** 2 *Hen.* 6. *c.* 15. 'None ſhall faſ-
'ten Trunks or other Nets over Rivers to the
'Deſtruction of the Fry of *Fiſh*, and Diſturb-
'ance of the common Paſſage of Veſſels, on
'Pain to forfeit 5*l.* to the King: Howbeit

'they

'they may use them at seasonable Times, so 'they draw them as other *Fishers* do in their 'Nets, without fastening them. And every 'Man's Right of *Fishing* is saved.'

By **Stat.** 1 *Eliz. c.* 17. 'None shall use 'any Net or Engine to destroy the Spawn or 'Fry of *Fish*, or take *Salmons* or *Trouts* out of 'Season, or *Pike* shorter than ten Inches, *Sal-* 'mon than sixteen, *Trouts* than eight, and *Bar-* 'bels than twelve; or shall use any Engine to 'take *Fish*, other than *Angle* or Net, or a Tra- 'mel of two Inches and an half Mesh, on 'Pain to forfeit 20*s.* the *Fish* so wrongfully 'taken, and the Net or Engine so wrongfully 'used.'

'All Persons having Jurisdiction of Conser- 'vancy upon Streams of Waters, and Lords of 'Leets, have Power, upon the Oaths of 12 'Men, to hear and determine these Offences, 'and shall have all the Forfeitures which ac- 'crue thereupon.'

'The Steward of a Leet shall give this Sta- 'tute in Charge to the Jury, on Pain of 40*s.* 'to be divided betwixt the Queen and the In- 'former.

'If the Jury wilfully forbear to present Of- 'fences of this Kind, the Steward or Bailiff 'shall impanel another Jury to inquire of their 'Default, which being found, the first Jury 'shall forfeit 20*s.* apiece.

'Upon Default of Presentment in Leets 'within one Year, Justices of Peace in Ses- 'sions, Justices of *Oyer* and *Terminer*, and Ju- 'stices

'ſtices of Aſſize in Circuits, have Power to 'hear and determine the ſaid Offences.'

'This Act ſhall not reſtrain the Taking of 'Smelts, *Loches*, *Minews*, *Bullheads*, *Gudgeons* or 'Eels, with Nets or Engines formerly uſed, 'ſo that no other *Fiſh* be taken therewith; nor 'ſhall extend to abridge any former Privilege 'of Conſervancy lawfully enjoyed, or *Fiſhing* 'in *Tweed*, *Uſke*, *Wye*, or in Waters let to 'Farm by the Queen, ſo that the Spawn or 'Fry of *Fiſh* be wilfully deſtroyed.'

By **Stat.** 5 *Eliz. c.* 21. 'None ſhall unlaw-'fully break down *Fiſh-Pond* Heads, or *fiſh* 'there, without Licence of the Owners, *&c.* 'on Pain to ſuffer three Months Impriſonment, 'and to be bound with good Sureties to the 'good Behaviour for ſeven Years.'

'The Party grieved ſhall in Seſſions or elſe-'where recover treble Damages againſt the De-'linquent, and on Satisfaction ſhall have Li-'berty to procure his Releaſe of Behaviour.'

'Juſtices of *Oyer* and *Terminer*, Aſſize, Peace 'and Gaol-delivery in Seſſions, have Power to 'hear and determine theſe Offences.'

'Juſtices of Peace upon the Offenders Ac-'knowledgment in Seſſions, and Satisfaction 'to the Party grieved, ſhall have Power to re-'leaſe the Behaviour.'

By **Stat.** 3 *Jac.* 1. *c.* 12. 'None ſhall erect 'any Wear along the Shore, or in any Haven 'or Creek, or within five Miles of the Mouth 'of any Haven or Creek, or ſhall willingly 'deſtroy the Spawn or Fry of *Fiſh*, on Pain of '10*l.* to be divided between the King and the

'Proſecu-

'Proſecutor; nor ſhall any Perſon *Fiſh* in any 'of the ſaid Places, with any Net of a leſs 'Meſh than three Inches and an half from 'Knot to Knot (except for the taking Smoulds 'in *Norfolk* only) or with a Canvas Net or 'other Engine, whereby the Spawn or Fry of '*Fiſh* may be deſtroyed, on Forfeiture of the 'ſaid Net or Engine, and 10*s.* in Money, to 'be divided betwixt the Poor of the Pariſh 'and the Proſecutor, and to be levied in Cor-'porations by the Head-Officers, and in other 'Places by Diſtreſs and Sale of Goods, upon 'a Warrant of a Juſtice of Peace, directed unto 'the Conſtable and Churchwardens of the ſame 'Pariſh for that Purpoſe.'

'By **Stat.** 22 & 23 *Car.* 2. 'A Perſon 'convicted by Confeſſion or Oath of one Wit-'neſs, within one Month after the Offence com-'mitted, before a Juſtice of the Peace, of ta-'king *Fiſh* by any Device whatſoever, in any 'Water or River, or aiding therein, ſhall make 'ſuch Recompence, and within ſuch Time, as 'the Juſtice ſhall appoint, not exceeding treble 'Damages, and pay down to the Overſeers of 'the Poor ſuch Sum as the Juſtice ſhall think 'meet, not exceeding 10*s.* in Default to be le-'vied by Diſtreſs; and for Want thereof the 'Offender to be committed, not exceeding one 'Month, unleſs he enters into Bond with Sure-'ties to the Party injured, not exceeding 10*l.* 'never to offend in like Manner; the Juſtice 'before whom convicted may deſtroy the En-'gines; and Perſons aggrieved may appeal to

'the

'the Quarter-Sessions, whose Order shall be 'final, if no Title to any Land, Royalty or 'Fishery be therein concerned.' *

By **Stat.** 30 *Car.* 2. *c.* 9. 'None shall in 'the River *Severn fish* with or use any Net, 'Engine or Device, whereby any *Salmon*, *Sal-*'*mon-mart*, *Salmon-peal*, *Pike*, *Carp*, *Trout*, *Bar-*'*bel*, *Chub* or *Grayling*, the Mesh whereof shall 'be under two Inches and an Half Square from 'Knot to Knot, or above twenty Yards in 'Length, and six in Breadth, or above fifty 'in Length, and six in Breadth, in the Wing 'of the Net, in the said River from *Ripley-*'*Lockstake* to *Glouceſter*-Bridge, or above sixty 'in Length below *Glouceſter*-Bridge, and six in 'Breadth in the Wing of the Net; or shall '*fish* with more than one of those Nets at once, 'nor shall use any Device for taking the Fry of '*Eels*, on Forfeiture of 5*l.* for every Offence, 'with the *Fish* so taken, and the Instruments 'with which, *&c.*

'None between the first of *March* and last 'of *May* shall do any Act whereby the *Spawn* 'of *Fish* shall be destroyed, on Forfeiture of '40*s.* for every Offence, and the Instruments.'

'The Justices of Peace in the Counties of '*Worceſter*, *Salop* and *Glouceſter*, shall be Con-'servators of the Rivers in their respective 'Counties, and make one or more Conserva-'tors in their Limits; to whom or to any 'Constable, *&c.* upon their Knowledge or In-

* See the Form of a Warrant to levy the Forfeiture incurred by this Stat. on a Person fishing in a River or Pond, p. See also *Stat.* 9 *Geo.* 1. *p.* 92.

'formation

'formation of any such Offence, any two of 'them shall issue Warrants to search suspected 'Houses, &c. for unlawful Instruments, to 'seize and bring them to the Quarter-Sessions 'to be destroyed.'

'None shall be punished for the said Offences 'but by Information or Indictment before the 'Justices of *Assize* and *Nisi Prius*, *Oyer* and *Ter-* 'miner, and Gaol-delivery, or in the General 'Sessions of Peace; one Moiety of the Forfei- 'ture shall be to the Poor of the Parish where 'the Offence shall be committed, the other to 'the Prosecutor, to be levied by *Fieri Facias* or 'Capias ad Satisfaciendum.'

'The Jurisdiction of the Lords of Leets or 'Franchises saved, and all Rights, &c. of the 'King and others in the said River.'

By **Stat.** 4 & 5 *Ann.* c. 21. 'The Acts 4 & '5 *W.* & *M.* & *Westm.* 2. to be duly put in 'Execution, and to extend to all Rivers, 'Creeks, &c. in the County of *Southampton* 'and Southern Parts of *Wiltshire*, &c. in like 'Manner and under the same Penalties, as are 'contained in the above-mentioned Act, which 'see under **Nets.**'

'Justices residing near the Rivers shall assign 'Overseers of this Act, who shall inquire after 'Offenders against this Statute, and apprehend 'them and destroy their Nets, &c. every Of- 'fender to be brought before a Justice of Peace, 'and being convicted by the Oath of one or 'more Witnesses, or by his own Confession, 'shall forfeit for the first Offence a Sum to be 'ascertained by the Justice, not under 20*s.* nor

'above

'above 5 *l.* and for the second, not under 40*s.* 'nor more than 10 *l.* and as the Offence shall 'increase, the Justice shall double the Penalty; 'one Half thereof to the Informer, the other 'to the Poor of the Parish where the Offence 'is committed; and if the Offender do not on 'Demand pay the Penalty, or be not able, the 'Justice shall send him to the House of Correc-'tion for three Months.'

'No Person (not duly qualified) shall here-'after kill *Salmon*, or any other *Fish*; and no 'Person whatsoever shall take, kill, *&c.* any '*Salmon*, *Salmon-Peal*, or *Salmon-Kind*, by 'Hawks, Racks, Gins, *&c.* at any Time after '*June* the thirtieth till *November* the eleventh, 'under the Penalties afore mentioned.'

'Owners of Meadow-Grounds, *&c.* to let '*Salmon* pass out of Dikes, *&c.* into the Ri-'vers and not destroy them, under the like 'Penalty.'

'Owners of Mills, *&c.* to keep open one 'Scuttle of a Foot Square in the Waste-hatch, 'for *Salmon* to pass up and down, from the 'eleventh of *November* to the thirty-first of '*May* every Year, and not to use any Nets, '*&c.* in the said Scuttle during the said Term, 'on like Penalty; and not to lay any Pots or 'Nets to catch *Eels* after the first of *January* to 'the tenth of *March*, unless Racks be set be-'fore them, *&c.*'

'No *Bouges* or *Sea-Trouts* shall be taken, or '*Salmon* sold, after the thirtieth of *June* till the 'eleventh of *November* every Year, under like 'Penalties.'

'The Forfeitures to be levied by Diſtreſs 'and Sale of the Offender's Goods, by War- 'rant of the Juſtice before whom convicted; 'and for want of Diſtreſs, to be ſent to the 'Houſe of Correction: But this Act ſhall not 'extend to any Country or Place in this King- 'dom, ſave only to the County of *Southampton* 'and Southern Parts of *Wiltſhire*.'

By **Stat.** 1 *Geo.* 1. *c.* 18. 'The Clauſe in 'the Act of 4 & 5 *Ann. c.* 21. relating to the 'catching of *Salmon*, &c. from the thirtieth of '*June* till the eleventh of *November*, ſo far as 'relates to the Owners of *Fiſheries* in the Rivers 'mentioned in the ſaid Act, is repealed: And 'ſuch Owners may take *Salmon*, &c. from the 'eleventh of *November* to the firſt of *Auguſt*; 'but no ſuch Owner ſhall between the firſt of '*Auguſt* and the eleventh of *November* follow- 'ing take any *Salmon*, or offer the ſame to Sale, 'under the Penalties in the ſaid Act of 4 & 5 '*Ann. c.* 21.'

'Perſons deſtroying the Fry of *Salmon* in the 'Rivers *Severn*, *Dee*, *Wye*, *Teame*, *Ware*, *Tees*, '*Ribble*, *Merſey*, *Dun*, *Air*, *Ouze*, *Swaile*, *Cal- 'der*, *Wharf*, *Eure*, *Darwent* and *Trent*, with 'Nets, Engines, &c. whereby the Spawn of '*Salmon*, or any *Kepper* or *Shedder-Salmon*, or 'any not being eighteen Inches in Length from 'the Eye to the Extent of the Middle of the 'Tail; or who ſhall erect any Bank, Dam, 'Hedge, or Nets, croſs any of the ſaid Rivers, 'whereby the *Salmon* may be hindered from 'paſſing up the ſaid Rivers to ſpawn; or ſhall 'take any *Salmon* in the ſaid Rivers between

'the

'the last Day of *July* and the twelfth of *November*, or who shall after the twelfth of *November fish* there for *Salmon* with other Nets, 'c. than are allowed by 1 *Eliz. c.* 17. and 30 *Car.* 2. *c.* 9. being convicted thereof before one Justice of the Peace of the County where the Offence shall be committed, either upon View of such Justice, by Confession, or by one Witness upon Oath, shall forfeit 5 *l.* for every Offence, besides the *Fish* * so taken, and the Nets, 'c. one Half to the Informer, the other to the Poor of the Parish where the Offence shall be committed, to be levied by Distress and Sale of Goods, rendering the Overplus, above the Charges of the Distress; and for want of such Distress, the Offender to be committed to the House of Correction, or other County Gaol, for any Time not exceeding three Months, or less than one, there to be kept to hard Labour, and suffer such other corporal Punishment as the Justices shall think fit; the Nets, 'c. to be forfeited, and the Banks, 'c. to be removed at the Charge of the Offender, which if not paid on Conviction, to be levied as the said 5 *l.*

'Persons convicted of sending to *London* from any of the said Rivers, to Fishmongers or their Agents, or buying or selling any such *Salmon*, weighing less than six Pounds each, shall forfeit 5 *l.* and the *Fish*; one Half of the said Sum and *Fish* to the Informer, the

* *Note*, It is not said who shall have the Fish, so that it seemeth that they are forfeited to the King. *Burn's Justice, p.* 326. 5th Edit. in fol.

'other

'other to the Poor where the Offence ſhall be 'committed, to be levied by Diſtreſs, if the 'Sum be not paid on Conviction; and for 'want of ſuch Diſtreſs the Offender ſhall be 'committed to the Houſe of Correction or 'County Gaol, there to be kept to hard La-'bour for three Months, unleſs the Forfeiture 'be paid in the mean Time.'

'Offenders in the ſaid Rivers puniſhed by 'this Act, ſhall not be proſecuted on any other 'for the ſame Offence.'

'Perſons aggrieved by any Judgment of Ju-'ſtices, in the Caſes aforeſaid, may appeal to 'the Quarter-Seſſions of the County, *&c.* who 'are hereby impowered to hear and finally de-'termine the ſame.'

'This Act ſhall not extend to any ancient 'Wears or Locks on any Rivers; but the Pro-'prietors thereof may repair, rebuild, remove 'or take down any of them, as they might 'have done if this Act had not been made.'

By Stat. 9 *Geo.* 1. *c.* 22. Stealing *Fiſh* out of any River or Pond, or breaking down the Head or Mound of any *Fiſh* Pond, whereby the *Fiſh* ſhall be loſt or deſtroyed, made Felony without Benefit of Clergy. Continued by 24 *Geo.* 2. *c.* 57. to *Sept.* 1, 1757, and from thence, *&c.* See *antea*, p.

A War-

A Warrant againſt a *Fiſher* for taking *Salmon* under Size, in order to convict him. (1 *Geo.* 1. *cap.* 18.)

To the Conſtable of, &c.

WHereas *Complaint hath been made unto me by* H. W. *of*, &c. *That* C. C. *of your Pariſh hath lately killed and deſtroyed ſeveral* Salmons, *not being of the Size the Law requires*, to wit, *not eighteen Inches in Length from the Eye to the Extent of the Tail*; These *are therefore to command you to apprehend the ſaid* C. C. *and to bring him before me or ſome other of his Majeſty's Juſtices of the Peace for this County, to anſwer the Premiſſes, and be dealt with according to Law.* Given, &c.

A Warrant to levy the Forfeiture on a *Miller* for deſtroying *Salmon*. (4 & 5 *Ann. cap.* 21.)

WHereas *it hath been duly proved before me* J. A. *Eſq; one of his Majeſty's Juſtices of the Peace for the County of* Southampton, *reſiding near the River of*, &c. *in the ſaid County, which runs into the Sea there, That* D. J. *of*, &c. *Miller, living in the Mill called*, &c. *on the River aforeſaid, hath not kept open a Hatch for the* Salmon *to paſs and repaſs from the eleventh Day of* November *to the thirty-firſt of* May *laſt, as the Statute in that Behalf directs and requires,*

but hath lately taken and deſtroyed ſeveral Salmons *in Pots, and by other Means in the ſaid River out of Seaſon, contrary to Law:* **These** *are therefore to command you to demand of the ſaid* D. J. *the Sum of* 20s. *which he hath forfeited by the Offence aforeſaid; and if the ſaid* D. J. *refuſes to pay the ſame, that you do levy it by Diſtreſs and Sale of the Goods of the ſaid* D. J. *and if no ſuch Diſtreſs can be found, that you convey him to the Houſe of Correction, there to remain for the Space of three Months, according to the Direction of the ſaid Statute in that Caſe made and provided.* **Given,** &c.

A Warrant for taking Nets and *Fiſh*, (4 & 5 *W. & M. cap.* 23.) *Vide Shaw's Juſtice*, Vol. 1. *p.* 400. for a Precedent on this Act.

To the Conſtable of, &c.

——— to wit. } **B***Y Virtue of an Act of Parliament in that Caſe made; Theſe are to require you, on Sight hereof, (in the Day-time) to make ſtrict Search in Houſes and Outhouſes of all Perſons in your Pariſh not qualified to take* Fiſh *in Rivers or* Fiſheries, *except navigable Rivers, and Makers and Sellers of ſuch Nets, or Owners of* Fiſheries; *and if on your Search, or you ſhall be informed of ſuch Nets laid in any River or* Fiſhery, *then you are to ſeize them and bring them to the Lord of the Manor, to be kept for his Uſe, or deſtroyed, as he ſhall think fit.* Given, &c.

A Declaration in Treſpaſs for breaking the Plaintiff's Cloſe, and *Fiſhing* in his *Fiſhery*.

Southampton, to wit. } T. P. *complains of* J. K. L. W. *and* E. J. *being in the Cuſtody of the Marſhal of the* Marſhalſea *of our Sovereign Lord the King, before the King himſelf, for that on the nineteenth Day of* May *in the ſeventh Year of the Reign of our preſent Sovereign Lord* George *the Second, and ſo forth, they the ſaid* J. K. L. W. *and* E. J. *with Force and Arms broke and entered into the Cloſe of the ſaid* T. P. *called,* &c. *at,* &c. *in the ſaid County of* Southampton; *and in walking in the ſaid Cloſe, trod down and deſtroyed the Graſs of the ſaid* T. P. *then and there growing, to the Value of* 40*s. And alſo for that afterwards, that is to ſay, the ſame Day and Year, at,* &c. *aforeſaid, in the ſaid County of* Southampton, *with Force and Arms they the ſaid* J. K. L. W. *and* E. J. Fiſhed *in the ſeparate* Fiſhery *of the ſaid* T. P. *in the River of,* &c. *in the,* &c. *aforeſaid, and then took and carried away* Fiſhes *from his the ſaid* T. P.*'s ſaid ſeparate* Fiſhery *there found, that is to ſay,* 1000 *Daces, and* 1000 *Gudgeons, to the Value of* 50 *l. And then and there committed other Injuries againſt the ſaid* T. P. *againſt the Peace of our ſaid Sovereign Lord the King, and to the Damage of the ſaid* T. P. 200 l. *and therefore he brings his Suit,* &c.

An Indictment (at Common Law) for *Fishing* without the Consent of the Owner.

Middlesex, to wit. } *THE Jurors* &c. *That* D. P. *of*, &c. *in the County aforesaid, Yeoman, the third Day of* June *in the seventh Year*, &c. *with Force and Arms, the Close of* M. A. *at* A *in the County aforesaid broke, and in the several* Fishery *of the said* D. P. *unlawfully did* fish, *and* Fish *there*, to wit, *two* Salmons *and ten* Trouts, &c. *to the Value of*, &c. *then and there took and carried away, and his Grass to the Value of*, &c. *there lately growing did tread down and destroy, and other Enormities to him did, against the Peace*, &c.

An Indictment for *Fishing* in a Pond.

Middlesex, to wit. } *THE Jurors*, &c. *That* C. D. *of* B. *in the said County, Yeoman, on the* —— *Day of* —— *in the* —— *Year of the Reign*, &c. *and on divers Days and Times, as well before as after the said* —— *Day of* —— *at* B. *aforesaid in the said County, with Force and Arms, did unlawfully* fish *with Nets and other Engines in a certain Pond there, being the Freehold of* E. F. *Esq*; *and did then and there take and carry away divers* Fish, *that is to say, fifty Trouts, fifty Carps*, &c. *against the Peace*, &c.

Taking

Taking *Fiſh* out of a Net, Trunk or Pond is Felony, becauſe they have not their natural Liberty as in Rivers. 1 *Vent.* 122.

Law Caſes.

Any Man may erect a *Fiſh* Pond without Licence; becauſe it is a Matter of Profit, and for the Increaſe of Victuals. 2 *Inſt.* 199.

In Treſpaſs for breaking and entring his Cloſe, and *fiſhing* in *ſeparali piſcaria ſua*, [*in his ſeparate Fiſhery*] and for taking *his Fiſh* there, (*viz.*) one hundred *Eels*; upon Not guilty pleaded, the Plaintiff had a Verdict, and intire Damages; but it was moved in Arreſt of Judgment, that the Declaration was ill, becauſe it was for taking *his Fiſh*; whereas he cannot have a Property in them, ſo as to call them *his Fiſh*, till they are taken, and in his Poſſeſſion; but adjudged, that he having ſet forth, that they were taken in his *ſeparate Fiſhery*, he hath a Property in them; for no other Perſon can enter and take them there; if it had been *extra liberam piſcariam ſuam* [*out of his Free Fiſhery*] the Action would not lie. *Child* againſt *Greenhill*, *Cro. Car.* 390, 399, 553. *March* 48. S. C.

The Queſtion at a Trial at Bar concerning the *River of Wallfleet* was, whether *T. S* had a Right of *Fiſhing* there, excluſive of all other Perſons; and the *Lord Chief Juſtice Hale* thus diſtinguiſhed;

If. That a Lord of a Manor having the Soil of a private River, 'tis good Evidence to prove that he hath the Right of *Fiſhing*, excluſive of

all others, and that he who will claim *free Fiſhing* in ſuch a River, muſt prove his Right; but that where a River *ebbs* and *flows*, and is an Arm of the Sea, in ſuch Caſe the *Fiſhing* there is common to all People; and if an Action of Treſpaſs is brought againſt any Man for *fiſhing* there, 'tis a good Juſtification for the Defendant to plead, that the Place where the Treſpaſs is ſuppoſed to be done, is an *Arm of the Sea*, in which every Subject of the King hath and ought to have *free Fiſhnig*; that in the River *Severn* there are ſeveral Reſtraints as *Gurgites*; but that on each Side of the ſaid River, the Soil doth belong to the reſpective Lords on thoſe Sides, and they have a peculiar Sort of *Fiſhery*; but that the common *Fiſhery* belongs to all People; that the Soil of the River *Thames* is in the King, and that the Lord Mayor of *London* for the Time being is Conſervator of that River, and that it is common to all Fiſhermen. 1 *Mod.* 105.

Treſpaſs, *&c.* for breaking his Cloſe, *&c.* the Defendant juſtified, for that the Place where the Treſpaſs was ſuppoſed to be done is in *B.* in which Place he had a Right of *Fiſhing* by Preſcription; and upon a Demurrer to this Plea, it was adjudged not good; becauſe there are ſeveral Sorts of Fiſheries, (*viz.*) *free Fiſhing*, *ſeveral Fiſhing*, and *common Fiſhing*; and he (the Defendant) did not ſet forth to what Kind of *Fiſhing* he had a Right, nor whether it was a Right as appertaining to any Manor or Meſſuage, but made it a mere Perſonal Thing by this Plea; 'tis true an *Eaſement* (as a Way) may be claimed without ſetting forth to what it appertains, and ſo may

a *Liberty*, but an *Intereſt* cannot; as for Inſtance, a *Common* cannot, becauſe 'tis an *Intereſt*, and ſo is a *Right of Fiſhing*. *Hardres* 407.

The Defendant was indicted for taking out of the Pond of *T. S.* at *H. &c.* certain *Fiſh*, called *Carp Fiſh*, *de bonis & catallis ipſius* T. S. *propriis* [*the proper Goods and Chattels of him the ſaid* T. S.] An Exception was taken to this Indictment, becauſe it did not ſet forth how many *Fiſh* the Defendant did take; and for this Purpoſe, 5 *Rep.* 34. *Playter*'s Caſe was cited, which was an Action of Treſpaſs *Quare clauſum fregit, & piſces ſuos cepit* [*wherefore he broke his Cloſe, and took his Fiſh*]; the Plaintiff had a Verdict and intire Damages, but the Judgment was ſtayed for the *Incertainty of the Number and Nature of the Fiſhes taken*; but the principal Caſe being upon an Indictment, Damages are not to be recovered, but the Offender is to be fined at the Diſcretion of the Court, according to the Circumſtances of the Fact, and not according to the Number of the *Fiſh* he took; 'tis true, in Actions of Treſpaſs the Modern Reſolutions have been according to *Playter*'s Caſe; as for Inſtance, in Treſpaſs, *&c.* for taking his *Fiſh*, not ſetting forth *what Number, or of what Kind*; the Plaintiff had a Verdict, but could never get Judgment; for the Chief Juſtice *Hale* was of Opinion, that both the *Kind* and *Number* ought to be ſet forth; and that where the Plaintiff declares for *Fiſhing* in his *ſeveral Fiſhery*, and taking *Eels* there, 'tis uſually ſaid what Numbers. *The King* againſt *Wetwany*, 1 *Lev.* 203. 1 *Keb.* 178. S. C. 3 *Keb.* 107. *Burrage*'s Caſe.

The Defendants were indicted, for that they *Vi & Armis*, and without Licence and unlawfully did fiſh *in quadam piſcinâ* of *T. S.* and took and carried away ſeveral *Fiſh* in the Night with Nets, againſt the Form of the Statute *5 Eliz. c.* 21. It was held, that if this had been an Indictment at Common Law, it had been ill; becauſe the Words *riotoſe aſſemblaverunt* were left out, but that it was well enough upon the Statute; however this Indictment was quaſhed, becauſe of that inſenſible Word *Piſcina*, whereas *Piſcaria* is the proper Word to expreſs a *Fiſhery*. *The King* againſt *Marſhal and others*, 2 *Keb.* 594.

Treſpaſs, *&c.* for that the Defendant *with Force and Arms* on ſuch a Day, *&c.* and in ſuch a Place, did fiſh in his (the Plaintiff's) *free Fiſhery*, and did take *Fiſh* there, *&c.* upon Not guilty pleaded the Plaintiff had a Verdict; and it was moved in Arreſt of Judgment, that he who had a *free Fiſhery* could not maintain this Action, becauſe it was only a Freedom of *Fiſhing* with others, and the ſame as *Communis piſcaria*, and that ſuch a Grantee had only a Liberty to take *Fiſh*, and no Property in them till they are taken; that *libera piſcaria* was not like *libera warrena*; for a Grantee of the laſt might maintain Treſpaſs againſt any one but the Owner of the Soil, for hunting in his *free Warren*, becauſe that is a Liberty to hunt in his own or another's Ground excluſive of others; and this Grant the King may make, who is Maſter of all the Game; but a *free Fiſhery* is only a Freedom of *fiſhing* with others. But *Holt* Chief Juſtice held there were three Sorts of *Fiſheries*, *(viz.)* a *ſeveral Fiſhery*,

Fiſhery, and he who has ſuch a *Fiſhery*, is the Owner of the Soil where the Water doth run; and therefore if *T. S.* ſhould bring an Action, *&c.* for *fiſhing* therein, the Defendant may plead that 'tis *liberum tenementum* of another; the next is *libera piſcaria*, *free Fiſhery*, which is where the Right of *fiſhing* is granted to *T. S.* in ſuch Caſe he hath the Property of the *Fiſh*, and may bring a poſſeſſory Action for them without making any Title; the laſt is *communis piſcaria*, and this is like the Caſe of other Commons. See *Regiſt.* 95. in Point. *Smith* againſt *Kemp*, 2 *Salk.* 637. 4 *Mod.* 355. S. C. 1 *Inſt.* 122. *was denied to be Law.*

Treſpaſs, *&c.* in which the Plaintiff declared *quare piſces ſuos cepit in ſeparali piſcaria*; upon Not guilty pleaded the Plaintiff had a Verdict; and now it was moved in Arreſt of Judgment, that the Declaration was ill, becauſe the Plaintiff could not declare for taking *Piſces ſuos*, unleſs they had been in a Stew or Trunk; but it was adjudged, that after a Verdict any Thing ſhall be intended to make the Declaration good.

Foot-geld, In *Saxon* Fot-ȝelðan, is an Amerciament for not expeditating Dogs in the Foreſt.

A Man claimed to be quit of *Foot-Geld* * and produced a Grant for the ſame, which was allowed: But a Man cannot preſcribe for the ſame, becauſe ſuch Preſcription cannot have any reaſonable Commencement. *Aſſizes of Pickering*, *Anno* 10 *Ed.* 3. *Manwood* 109.

* *i. e.* To keep Dogs in the Foreſt without being expeditated.

Foreſt, Is a certain Territory of Woody Grounds, and fruitful Paſtures, privileged for Wild Beaſts and Fowls of *Foreſt*, Chaſe, and Warren, to reſt and abide there in the ſafe Protection of the King, for his Delight and Pleaſure; and is in its Nature the higheſt Franchiſe of Princely Pleaſure, comprehending a Chaſe, a Park, and a Warren; which Territory of Ground ſo privileged is meered and bounded with unremoveable Marks, Meers and Boundaries, either known by Record or Preſcription; and alſo repleniſhed with Wild-Beaſts of Venary or Chaſe, * and with great Coverts of *Vert*, for the Succour of the Beaſts there to abide: For the Preſervation and Continuance of which Place, together with the Vert and Veniſon, there are particular Officers, Laws, and Privileges belonging to the ſame, requiſite for that Purpoſe, and proper only to a *Foreſt*, and to no other Place. *Manw.* 146. *All which will be inſerted under their Heads.*

The Beaſts of the *Foreſt* frequent the Coverts in the Day-time, and feed on the Lawns, Meadows and Paſture Grounds in the Night, and they are properly the *Hart*, the *Hind*, the *Buck*, the *Hare*, the *Boar*, and the *Wolf*; but legally all Wild Beaſts of Venary. 1 *Inſt.* 233.

* A Foreſt muſt be repleniſhed with wild Beaſts of Venary or Chaſe, and there muſt alſo be *Vert*, † otherwiſe 'tis no Foreſt. *Manwood* 145, 163. And this Privilege diſtinguiſhes a Foreſt from other Places, having Woods, Coverts and Fruitful Paſtures.

† *Vert* comprehends every Thing which bears *green Leaves* in a Foreſt. *Manw.* 146.

'Tis

'Tis a general Opinion amongſt the Learned in the Law, That the King only by the Law of Nations, or Common Law, may make a *Foreſt*. *Bract. Lib.* 2. *c.* 24. *Heſket, fol.* 8. *Manwood* 153.

The King being ſeiſed of a *Foreſt*, did grant the Foreſt to another in Fee, the Grantee ſhall have no *Foreſt*, becauſe he hath no Power to make Juſtices and Officers of the *Foreſt* to hold Courts, *&c.* but yet though it cannot take Effect by Force of the Grant as a *Foreſt*, yet the ſame ſhall paſs as a Free-Chaſe. But if the King grants a *Foreſt* to a Subject, and granteth further, that upon Requeſt made in Chancery, he and his Heirs ſhall have the Juſtice of the *Foreſt*, then the *Subject* hath a *Foreſt* in Law. 4 *Inſt.* 314.

The Oath of the Inhabitants of the *Foreſt*, being of the Age of twelve Years, was antiently uſed in theſe Old Rhymes.

You ſhall true Liege-Man be,
Unto the King's Majeſty:
Unto the Beaſts of the Foreſt *you ſhall no Hurt do,*
Nor to any Thing that doth belong thereunto:
The Offences of others you ſhall not conceal,
But to the utmoſt of your Power, you ſhall them reveal
Unto the Officers of the Foreſt,
Or to them who may ſee them redreſt:
All theſe Things you ſhall ſee done,
So help you GOD *at his Holy Doom.*

By **Stat.** 17 *Car.* 1. *c.* 16. 'Tis enacted, 'that the Metes, Limits, and Bounds of every

'*Foreſt*, ſhall be adjudged to extend no farther 'than they were commonly known or reputed 'to extend in the 20th Year of the Reign of 'King *James*; and no Place in *England* or *Wales* 'ſhall be adjuged a *Foreſt*, or within the Bounds 'of a *Foreſt*, where no *Juſtice-Seat*, *Swainmote*, 'or *Court of Attachments* have been held; or 'where no *Verderors* have been choſen, or *Re-* 'gard made within *ſixty Years* before the firſt 'Year of the Reign of King *Car.* 1. but the 'ſame Place ſhall be diſafforeſted, and exempt- 'ed from the Laws of the *Foreſt*.

'Provided, That for the better aſcertaining 'the *Metes and Bounds of the Foreſts*, the *Lord* 'Chancellor, *or Keeper of the Great Seal* for the 'Time being, ſhall upon Requeſt of any of 'the Peers, or Knights of Shires, or Burgeſſes 'of Parliament, grant Commiſſions under the 'Great Seal to Commiſſioners, to be nominated 'by them reſpectively, or by any of them, to 'make Inquiſition, by the Oaths of Witneſſes, 'concerning the *Metes and Bounds* of any *Foreſts*, 'which were commonly known to be ſuch in the '20th Year of King *James*, and to return into 'Chancery the Inqueſt ſo taken; and the She- 'riffs, *&c.* of every County where ſuch Inqui- 'ſition ſhall be taken, and the *Verderors*, *Fo-* 'reſters, *Rangers*, and other Officers of the *Foreſt* 'reſpectively, ſhall be aſſiſting to the Execu- 'tion of ſuch Commiſſions; or where there are 'no ſuch Officers, or where there are any and 'they ſhall neglect to attend, the Commiſſioners 'may proceed without them.'

'And

'And the *Metes and Bounds* of the *Foreſt* ſo 'returned, ſhall not be adjudged to extend far- 'ther; and all Places, which ſhall be without 'ſuch Metes and Bounds ſo returned ſhall be 'free, as if they had never been Part of the '*Foreſt*, or ſo reputed.'

'Provided, That all Grounds diſafforeſted 'by Letters Patent, or otherwiſe, ſince the 20th 'Year of the Reign of King *James*, ſhall be 'excluded and left out of the Metes and Bounds 'of *Foreſts*, to be inquired into by the ſaid Com- 'miſſioners, and are hereby declared to be diſ- 'afforeſted; and the Owners, of Grounds diſ- 'afforeſted ſhall enjoy Common in the *Foreſt* 'as heretofore.'

Law Caſes.

Hen. 8. granted a Leaſe to *T. S.* of the *Foreſt of Wayland* and *Sapley*; in which the Leſſee covenanted to keep 100 Deer there, during the Term demiſed, and at the End thereof to leave the like Number there; and afterwards the King granted the Reverſion thereof to the Lord *North*: Adjudged, that by the Grant of this Leaſe of theſe *Foreſts*, the Deer paſſed to Leſſee, and that the Grantee of the Reverſion could not kill them, becauſe that would be to diſable the Leſſee to perform his Covenant. *Dyer* 149.

Where the King granted the Herbage of his *Foreſt*, and a Stranger puts in his Cattle; adjudged, that the Grantee might either diſtrain them damage-feaſant, or he might have an Action

Action of Treſpaſs *quare clauſum fregit*; but he cannot take the Fruit of the Trees, or cut them down. *Dyer* 287.

A Man ſhall not enter the *Foreſt* in the Night-time; therefore if his Horſe is paſtured there, and he enter in the Night, and take out his Horſe, he ſhall be impriſoned, or ranſomed and bound to the Good Behaviour of the *Foreſt*. *Manwood* 214. See *Table*.

Foreſter, Is an Officer made by Letters Patent under the Great Seal, and is ſworn to preſerve *Vert* and *Veniſon* in the Foreſt; and to attend upon the Wild-Beaſts within his Bailiwick; to attach Offenders there, either in *Vert* or *Veniſon*, and to preſent the ſame at the Courts of the Foreſt, that they may be puniſhed according to the Quantity and Quality of their Offences and Treſpaſſes: Some *Foreſters* have their Office in Fee, paying to the King a Fee-Farm Rent: And a Man may be a *Foreſter* in Fee in Right of his Wife. Some have their Office for Life, and others only during Pleaſure. And *Foreſters* muſt not walk or make any Attachments in the Foreſt before they are ſworn, *Manwood* 162, 163.

The Oath of a *Foreſter*.

YOU *ſhall truly execute the Office of a* Foreſter, *or Keeper of the King's Wild-Beaſts, in the Walk called* P. *within the Foreſt of* W. *you ſhall be of good Behaviour yourſelf towards his Majeſty's Wild-Beaſts, and the Vert and Veniſon of the ſame; you ſhall not conceal the Offence of any other*

other Perſon, either in Vert or Veniſon, that ſhall be done within your Charge, but as well the ſame Offence, as alſo all Attachments, you ſhall preſent at the next Court of Attachment, or Swainmote, which ſhall happen to be holden for the ſame Foreſt; And you ſhall to the uttermoſt of your Power maintain and keep the Aſſize of the Foreſt; and in all Things the King's Right defend concerning the ſame ſo long as you ſhall be Keeper there.

So help you God.

Every *Foreſter* is bound to appear at the Juſtice-Seat, and when he is firſt called, he ought to deliver his Horn upon his Knees to the Chief Juſtice in Eyre, which is then delivered to the Marſhal, and he pays a Fine of 6*s.* 8*d.* before it is redelivered. *Manwood* 173.

A *Foreſter* cannot hunt or kill any Deer in the Foreſt without a lawful Warrant; for if he doth, he forfeits his Office: And ſo it is if he is negligent in apprehending Offenders, or willingly ſuffers them to kill or deſtroy the Game. *Manwood* 164, 165. 5 *Ed.* 4. *fol.* 26. *Trin.* 5 *Ed.* 4. *fol.* 5. *Placito* 64.

By **Stat.** 21 *Ed.* 1. 'A *Foreſter*, Parker, 'or Warrener ſhall not be queſtioned for kil-'ling a Treſpaſſer, who (after the Peace cried 'unto him) will not yield himſelf, ſo it be not 'done out of ſome other Malice.'

By **Stat.** 25 *Ed.* 3. *Stat.* 5. *c.* 7. 'No *Fo-'reſter*, or other Miniſter of the Foreſt, ſhall 'gather any Victuals, or other Thing, by Co-'lour of his Office, but what is due of old 'Right.' See *Table.*

Foreſt-Law, Is a private Law, and muſt be pleaded. 2 *Leon.* 209, 210. See *Laws of the Foreſt.*

Foreſt-Service. *Stanhope*, together with *Walſingham* and *Aukland*, in the Biſhoprick of *Durham*, were held of the Biſhop by *Foreſt-Service*, beſides Demeſnes and other Tenures. Particularly upon his great Huntings, the Tenants in thoſe Parts were bound to ſet up for him a *Field-houſe* or *Tabernacle*, with a Chapel, and all Manner of Rooms and Offices; as alſo to furniſh him with Dogs and Horſes, and to carry his Proviſion, and to attend him during his Stay, for the Supply of all Conveniencies. *Compleat Engliſh Copy-holder* 511. ſub Tit. *Stanhope.*

Fowl. See **Wild-Duck.**

Fox. The *Fox* is the third Beaſt of Chaſe, and is called the 1ſt Year a *Cub*, and the 2d a *Fox*, * and ſo afterwards; his Seaſon of Hunting begins at *Chriſtmas*, and laſteth till *Lady-Day.*

Though the Common Law warrants the Hunting of Beaſts of Prey in other Men's Grounds, as the Fox and the Badger; yet 'tis not lawful to dig the Ground to unearth them, as appears by the following Caſe:

In Treſpaſs for entering on and digging his Lands, the Defendant pleaded in Bar, that the common Voice was, that *quædam melis* a noiſome Vermin called a Badger, was on the ſaid Land,

* *Canutus* did not account a *Fox* a Beaſt of Chaſe, yet he was privileged in a Foreſt, and was not to be hurt there.

and

and had done much Harm there, and therefore he (the Defendant) came thither with his Dogs and hunted him; and in Purſuit of the ſaid Badger he followed his Dogs to kill it, and found him in the Plaintiff's Ground, which he digged, and killed him there, and filled up the Trench with Earth again *quæ eſt eadem tranſgreſſio & foditio (which is the ſame Treſpaſs and Digging)*; and upon a Demurrer, this was adjudged an ill Plea; for there is a Difference where a Man enters on the Land of another without his Leave to find ſuch Vermin, and where he enters in Purſuit of them when found; for in the firſt Caſe 'tis unlawful, but in the other Caſe 'tis juſtifiable; beſides this Plea is ill, for, the Defendant cannot juſtify the Digging; he might have found other Means to kill the Badger. *Gedge* or *Gueſt* againſt *Mimms*, 2 *Cro.* 321. 2 *Bulſt.* 60. S. C.

In Treſpaſs for hunting and breaking his Hedges, the Caſe was, A man unkennelled a *Fox* on his own Lands, and his Hounds purſued the ſame *Fox* into the Grounds of the Plaintiff; and if his Hedges were broke, it was done involuntarily, in Purſuit of the *Fox*; this was adjudged a good Plea, and that he might lawfully purſue the *Fox*, becauſe 'tis a noiſome Creature to the Publick. *Poph.* 163. in *Miller* and *Cowdry*'s Caſe.

Juſtification in Treſpaſs, where the Defendant was ſued, and juſtified for hunting and killing *Foxes* and Badgers.

AND *the aforeſaid* T. S. *as to the whole Treſpaſs aforeſaid, in the aforeſaid Place called* B. *with the Appurtenances, ſuppoſed to be, except the Breaking of the Cloſe aforeſaid and digging of the Soil aforeſaid, ſaith, that he is not thereof guilty; and of this he puts himſelf upon the Country,* &c. *And as to the Breaking of the Cloſe aforeſaid and the Soil in the aforeſaid Cloſe called* B. *above ſuppoſed to be done, ſaith, that the aforeſaid* (Plaintiff) *his Action aforeſaid, againſt the ſaid* (Defendant) *ought not to have, becauſe he ſaith, That within the Cloſe aforeſaid, called* B. *before the Time aforeſaid, in which the Treſpaſs aforeſaid is above ſuppoſed to be done, there were certain Earths and Kennels, wherein Badgers and Foxes, being hurtful living Creatures, and which were wont to kill Lambs, and other living Creatures, profitable and neceſſary for the Food and Suſtenance of Men, did Earth and Kennel themſelves: And the ſame* T. *further ſaith, that he the ſaid* T. (on ſuch a Day and Year) *in a certain Cloſe of Land called* W. *did find the Footing of two Badgers, being hurtful Creatures, and which were uſually accuſtomed to kill Lambs, and other ſuch like living Creatures as aforeſaid; and the ſame Footing of the ſaid Badgers ſo found, from the aforeſaid Cloſe called* W. *into the aforeſaid Cloſe* B. *called at the aforeſaid Time,* &c. *did follow and hunt, into which ſaid Cloſe the aforeſaid two Badgers, the aforeſaid Time in*

which

which, &c. *in the said Earths had Earthed themselves there, by which the same* T. S. *the aforesaid Time in which*, &c. *to kill and destroy them so under the Earth*, (as aforesaid) *Earthing in the Soil aforesaid, in the said Close called* B. *then and there did dig, and them then and there did kill and destroy, as it was lawful for him; which said Following and Hunting of the Badgers aforesaid into the aforesaid Close called* B. *are the same Breaking of the Close aforesaid, and Digging of the Soil aforesaid, whereof the aforesaid* (Plaintiff) *above against him complaineth; and this he is ready to verify*, &c.

The Laws for paying Rewards for *Foxes*, Crows, and other ravenous Creatures are expired. See the *Table*.

Frank-Chase, Is a Liberty of *Free-Chase*; by which all Persons, that have Lands within the Compass thereof, are prohibited to cut down any Wood, *&c.* without the View of the Forester, though it be in his own Demesnes. *Cromp. Jur.* 187.

Fresh-Suit *within the View*, impowers the Officers that pursue Trespassers in the Forest to seize them, even without the Bounds of it.

Game. By **Stat.** 4 *&* 5 *W. & M. c.* 23. 'All the Laws now in Force, for the better 'Preservation of the *Games* of this Kingdom, 'shall be duly put in Execution.'

By **Stat.** 3 *Geo.* 1. *c.* 11. 'The Stat. 5 & '9 *Ann.* * and all others now in Force, for 'the better Preservation of the *Game*, and all

* See Tit Dogs,

'Things

'Things therein contained, not hereby altered, 'ſhall remain in full Force.'

By **Stat.** 8 *Geo.* 1. *c.* 19. for the better Recovery of the Penalties inflicted upon Perſons who deſtroy the *Game*, it is enacted, 'That 'wherever any Perſon ſhall, for any Offence 'hereafter to be committed againſt any Law 'now in Being, for the better Preſervation of 'the *Game*, be liable to pay any pecuniary Pe-'nalty, upon Conviction before any Juſtice or 'Juſtices of the Peace, it ſhall be lawful for any 'other Perſon whatever either to proceed to re-'cover the ſaid Penalty by Information and 'Conviction before a Juſtice, or to ſue for the 'ſame by Action of Debt, *&c.* in any Court of 'Record, wherein no Eſſoin, *&c.* ſhall be allowed 'or more than one Imparlance; and the Plain-'tiff, if he recover, ſhall have double Coſts.'

'Provided, That all Suits and Actions to 'be brought by Force of this Act, ſhall be 'brought before the End of the next † Term 'after the Offence committed; and that no 'Offender againſt any of the Laws now in being 'for the better Preſervation of the *Game*, ſhall 'be proſecuted for the ſame Offence, both by the 'Ways preſcribed by this Law and by the Way 'preſcribed by any of the former Laws; and that 'in Caſe of a ſecond Proſecution, the Perſon ſo 'doubly proſecuted may plead in his Defence 'the former Proſecution pending, or the Con-'viction or Judgment thereupon had.'

† By Stat. 26 *Geo.* 2. c. 2. before the End of the 2d Term after the Offence committed.

The

The Form of an Information exhibited againſt one for killing and deſtroying the *Game*.

——— } BE it remembered, *That on the*
to wit. } *Day of in the Year of the Reign of our Sovereign Lord by the Grace of God, of* Great Britain, France *and* Ireland *King, Defender of the Faith, and ſo forth, at the Pariſh of in the County of who proſecuteth as well for the Poor of the Pariſh of as for himſelf in this Behalf, cometh before of the Juſtices of our ſaid Lord the King, aſſigned to keep the Peace of our ſaid Lord the King in the ſaid County, and alſo to hear and determine divers Felonies, Treſpaſſes, and other Miſdemeanors in the ſame County perpetrated; and giveth the ſaid Juſtice to be informed, that not having on the Day of in his own proper Right, or in the Right of his Wife, Lands, Tenements, or any other Eſtate of Inheritance of the clear yearly Value of* 100 l. *or for Term of Life, nor then having any Leaſe or Leaſes, or Eſtate, of or for ninety-nine Years, or for a longer Term, of the clear yearly value of* 150 l. *nor then being the Son and Heir apparent of an Eſquire, or other Perſon of higher Degree; nor being then the Lord of any Manor, nor the Owner or Keeper of any Foreſt, Park, Chaſe or Warren, being ſtocked with Deer or Conies for his neceſſary Uſe, nor being a Game-keeper of any Lord or Lady of a Lordſhip or Manor, nor being truly and properly a Servant of any Lord*

or

or Lady of a Manor, nor immediately employed and appointed to take and kill the Game *for the ſole Uſe or immediate Benefit of any ſuch Lord or Lady, nor then having any lawful Right, Title, Appointment or Authority to have keep, or uſe, nor then being lawfully qualified to have, keep or uſe a Gun, Greyhound, Lurcher, ſetting Dog, or other Engine to kill and deſtroy the* Game, *did nevertheleſs, and contrary to the Statutes and Laws of this Realm, on the ſaid Day of in the ſaid Pariſh of to kill and deſtroy the* Game, *whereby he hath forfeited the Sum of* 5 l. *one Half to the ſaid the Informer, and the other Half to the Poor of the ſaid Pariſh of where the Offence was committed. And the ſaid prayeth the Judgment of the ſaid Juſtice in the Premiſſes, and that the ſaid may be ſummoned to anſwer the ſame.*

The Form of the Summons *.

To of in the County of

——— to wit. } *YOU are hereby to take Notice, that this Day cometh before of his Majeſty's Juſtices of the Peace in and for the ſaid County, and exhibiteth to an Information and Complaint againſt you, for having, contrary to the Statutes and Laws of this Realm, on the Day of at to kill and deſtroy the*

* A Defence cures all Defects in Summons's. 1 *Str.* 261. See *Salk.* 181, 383.

Game,

Game, *you not having then any legal Right, Title, Power, Appointment or Authority ſo to do, nor being thereunto qualified, according to the ſaid Laws or Statutes; whereby you have forfeited, as he alledgeth, the Sum of* 5 l. *And the ſaid prayeth of to ſummon you to anſwer the Matters contained in the ſaid Information: Theſe are therefore to require and ſummon you the ſaid to be and appear before at on the Day of by of the Clock in the Forenoon of the ſame Day, then and there to anſwer to the ſaid Information, and the Matters therein contained, and to make your Defence thereto. And take Notice, that if you neglect ſo to do, ſhall then and there proceed to examine into the Cauſe of the ſaid Information, and into the Matters contained and alledged therein, and proceed to give ſuch Judgment thereupon, as ſhall appear to to be juſt and agreeable to Law. And do appoint and require to ſerve this Summons, and to attend at the Time and Place above mentioned, then and there to make a Return to of the Execution hereof. Given at on the Day of under Hand and Seal*

Note; A Copy of the above Summons muſt be ſerved on the Offender.

The Return.

BY *Virtue of the written Precept, I have ſummoned the named to be and appear as I am authorized and required to do.*

To Conſtable of the Parſh of in the County of and to all other the Conſtables and Peace Officers of his Majeſty in the ſaid County of

——— } to wit. } *FOraſmuch as of upon the Information of who proſecuteth as well for the Poor of the Pariſh of in the ſaid County of as for himſelf in this Behalf, is, by and upon the Oath of credible Witneſs, made this Day of before of his Majeſty's Juſtices of the Peace of and for the ſaid County, convicted before of and for in the ſaid Pariſh, on the Day of to kill and deſtroy the* Game, *contrary to the Statutes and Laws of this Realm; he the ſaid not having then any lawful Right, Title, Appointment, Power or Authority to keep or uſe, nor being lawfully qualified to keep or uſe, a or any other Engine, to kill and deſtroy the* Game: *By Reaſon whereof the ſaid hath forfeited the Sum of* 5 l. *one Half to be paid to the ſaid the Informer, and the other Half to the Poor of the ſaid Pariſh of where the Offence was committed: Theſe are*

are therefore in his Majesty's Name to command you to levy by Distress and Sale of the Goods of the said the said Sum of 5 l. *and to pay one Half of the same to the said the Informer, and the other Half to the Poor of the said Parish of And what you shall do in the Execution of this Precept you are to certify to as* (mentioning the Place) *on the Day of Given under Hand and Seal at this Day of*

Note; The *Time* and *Place* must be mentioned in the Warrant: For must the Constable seek the Justice all over the County? Surely it is but reasonable for the Justices of Peace, where they have but a special Authority, (as in such Cases they only have) to insert a Time and Place of Return in their Warrants.

The Constable not obliged to return the Warrant itself to the Justice, but may keep it for his own Justification in Case he shall be questioned for what he has done; but he must give the Justice an Account of what he has done upon it.

The Form of a Declaration in Debt, upon the Statute of the 8 *Geo.* 1. *cap.* 19.

Wilts, to wit. } T. S. *Gent. who as well for the Poor of the Parish of* Biddison *in the County aforesaid, as for himself in this Behalf prosecutes, complains of* L. R. *in the Custody of the Marshal of the* Marshalsea, &c. *of a Plea, that he render to the said Poor, and to the said* T.

S. 20*s.* *of lawful Money of* Great Britain, *which to the ſaid Poor and the ſaid* T. S. *who as well, and ſo forth, he owes, and unjuſtly detains; for that,* to wit, *Whereas by a certain Act of Parliament of our late Sovereign Lord* George *the Firſt, of* Great Britain, France *and* Ireland *late King, Defender of the Faith, and ſo forth, held at* Weſtminſter *in the eighth Year of his Reign, it was amongſt other Things enacted, by the King's moſt Excellent Majeſty, by and with the Advice and Conſent of the Lords Spiritual and Temporal and Commons in the ſame Parliament aſſembled, and by the Authority of the ſame, That whereſoever any Perſon ſhall, for any Offence to be hereafter committed againſt any Law now in Being for the better Preſervation of the* Game, *be liable or ſubject to pay any pecuniary Penalty or Sum of Money, upon Conviction before any Juſtice or Juſtices of the Peace, it ſhall and may be lawful for any other Perſon whatſoever, either to proceed to recover the ſaid Penalty, by Information and Conviction before a Juſtice or Juſtices of the Peace, in ſuch Manner as is in ſuch Law contained, or to ſue for the ſame by Action of Debt, in any of his Majeſty's Courts of Record, wherein no Eſſoin, Protection, Wager of Law, or more than one Imparlance ſhall be allowed; and wherein the Plaintiff, if he recovers, ſhall likewiſe have his double Coſts; as in and by the ſaid Act more fully it doth and may appear. And the ſaid* T. S. *who as well, and ſo forth, further ſaith, That by another Act in Parliament of our late Sovereign Lord and Lady* William *and* Mary, *of* England, Scotland, France *and* Ireland *late King and Queen, Defenders of the Faith,*

and

and so forth, held at Westminster *in the fourth and fifth Years of their Reign, it was amongst other Things enacted by the King's and Queen's most excellent Majesties, by and with the Advice and Consent of the Lords Spiritual and Temporal and Commons in the same Parliament assembled, and by the Authority of the same, That if any Tradesmen, Apprentices, and other dissolute Persons, neglecting their Trades and Imployments, shall presume to hunt, hawk, fish or fowl, (unless in Company with the Master of such Apprentice, duly qualified by Law) such Person or Persons, upon Conviction before some Justice of Peace of the same County, shall forfeit the Sum of* 20s. *one Moiety to be paid to the Informer, and the other Moiety to the Poor of the Parish where the Offence is committed, as in and by the said last recited Act it doth more fully and at large appear: And the aforesaid* T. S. *saith, That after the making of the Statute aforesaid,* to wit, *the* 28*th Day of* September *in the seventh Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God now of* Great Britain, France *and* Ireland, *King, Defender of the Faith, and so forth, the aforesaid* L. *being a dissolute Person neglecting his Trade and Imployment, at* H. *in the Parish aforesaid, the Day and Year last mentioned, unlawfully did hunt and follow Greyhounds, and Hounds, in and upon the Lands of the said* T. S. *who as well, and so forth, in the Parish aforesaid; which Hunting is an Offence committed since the making the Statute aforesaid, and against the Law then and now still in Being for the better Preservation of the* Game; *by Virtue whereof the aforesaid* L. *is subject and liable to pay a pecuniary Penalty*

upon Conviction before a Juſtice or Juſtices of the Peace; from whence this Action accrued, for the ſaid Poor of the ſaid Pariſh of Biddiſon, *where the Offence aforeſaid was committed, and alſo to the ſaid* T. S. *who as well, and ſo forth, to receive and have of the aforeſaid* L. 20 s. *of lawful Money, by the aforeſaid* L. *by Virtue of the Statute aforeſaid forfeited: Yet the ſaid* L. *although often requeſted, the ſaid* 20 s. *to the Poor aforeſaid and the ſaid* T. S. *who as well, and ſo forth, hath not rendered, but the ſame to the ſaid Poor and to the ſaid* T. S. *who as well, and ſo forth, to render hath hitherto altogether refuſed, and ſtill doth refuſe; wherefore the ſaid* T. S. *who as well, and ſo forth, ſaith he is prejudiced, and hath Damage to the Value of* 5 l. *and therefore, as well for the Poor of the ſaid Pariſh of* Biddiſon, *as for himſelf, he brings this Suit.*

By 4 & 5 *W.* & *M. c.* 23. *ſ.* 11. For the better preſerving the Red and Black *Game* of Grouſe, commonly called Heath-Cocks and Heath-Polts, 'No Perſon ſhall on any Mountains, Hills, Heaths, Moors, Foreſts, Chaſes, or other Waſtes, between the 2d of *February* and the 24th of *June*, burn any Grigg, Ling, Heath, Furz, Gors, or Fern, on Pain of being committed to the Houſe of Correction for any Time not exceeding a Month, nor under ten Days, there to be whipt and kept to hard Labour.'

As here is no Method of Conviction directed for this Offence, the Juſtices of Peace ſeem to have no Cognizance thereof; but the Trial and Conviction muſt be at the Aſſizes, or in the Courts

Courts at *Weſtminſter*. *Burn*'s Juſtice, p. 324. Edit. 5. in Fo.

By Stat. 5 *Ann. c.* 14. for the better Preſervation of the (Breed of) *Game*, 'None ſhall cut 'or burn into Aſhes on the Ground in the Foreſt 'of *Sherwood*, or any Waſte or Land in the 'County of *Nottingham*, without Licence from 'the Owner of the Soil, any Ling, Heath or 'Brakes, *i. e.* Fern, on Forfeiture of 10*s.* and 'of the Aſhes ſo burnt, to the ſaid Owner; 'and Perſons buying ſuch Fern-Aſhes ſhall 'forfeit 10*s. per* Peck; one Moiety to the 'Poor, *&c.* the other to the Informer; the 'Officers of the Foreſt and the Owners of the 'Land may take away the Inſtruments uſed for 'the ſaid Purpoſes, and keep them to their own 'Uſe. A Juſtice of the Peace may, on Com-'plaint, iſſue his Warrant to apprehend an 'Offender, and if the Party be convicted by the 'Oath of one or more Witneſſes, and do not 'immediately pay the Forfeitures, he ſhall be 'committed to the Houſe of Correction, and 'kept to hard Labour for a Month, unleſs the 'Penalties be ſooner paid.' (See **Hare**).

Search for *Game*, ſee *poſtea*, p. and for a Warrant to ſearch for *Game*, *vid.* p.

Law Caſes.

The Defendant *B.* being a Juſtice of Peace had convicted the Plaintiff for deſtroying *Game*, and though, as it was proved, the Plaintiff had Effects of his own which might have been diſtrained, which were ſufficient to anſwer the

Penalty he had incurred, yet *B.* ſent him immediately to *Bridewell*, without endeavouring to levy the Penalty upon his Goods; and an Action of Treſpaſs and falſe Impriſonment being brought againſt *B.* for this Commitment, *Raymond* Chief Juſtice was of Opinion that the Action well lay. The other Defendant was the Conſtable who had executed this Warrant; and as to him it was agreed, That the Warrant was a ſufficient Juſtification, it being *in a Matter within the Juriſdiction of the Juſtice of Peace.* Trin. 12 Geo. 1. *in* B. R. Hill *and* Bateman & al' M. S. Rep. — Str. 710. S. C.

Note *it was agreed, That where Actions of this kind are brought againſt Juſtices of the Peace, they are obliged to ſhew the Regularity of their Convictions; and the Informations,* &c. *laid before them, upon which their Convictions are grounded, muſt be produced and proved in Court.* Str. 711. in S. C.

Game-Keeper, Is one who has the Care of Keeping and Preſerving of the *Game*, being appointed thereto by Lords of Manors, *&c.* he has a limited Authority, and if he tranſgreſſes his Bounds, the Law no longer looks on him as qualified.

By **Stat.** 22 & 23 *Car.* 2. *c.* 25. *ſect.* 2. 'Lords of Manors or other Royalties, not 'under the Degree of an Eſquire, may by 'Writing under their Hands and Seals autho-'rize one or more * *Game-Keeper* or *Game-'Keepers*, within their reſpective Manors or Roy-'alties, and may impower them upon their own

* See 9 *Annæ, c.* 25. p. 127. by which only one *Game-keeper* is to be appointed.

'Manors

'Manors to kill Hare, Pheaſant, Partridge, or 'any other *Game*, and ſuch *Game-Keepers* may 'ſeize all Guns, Bows, Greyhounds, ſetting 'Dogs, Lurchers, or other Dogs to kill Hares 'or Conies; Ferrits, Tramels, Lowbells, Hays 'or other Nets, Hare-pipes, Snares or other 'Engines for taking Conies, Hares, Pheaſants, 'Patridges or other *Game*, uſed within ſuch 'Manors by Perſons prohibited by this Act 'to uſe the ſame: [See **Qualification**] Such '*Game-Keepers* and others, by Warrant from 'a Juſtice of Peace, may ſearch the Houſes 'of ſuch Perſons ſo prohibited, as ſhall be 'ſuſpected to keep ſuch Guns, *&c.* and ſeize 'them for the Uſe of the Lord of the Manor, or 'otherwiſe deſtroy them.' *Vide* Tit. **Gun.**

By **Stat.** 5 *Ann. Seſſ.* 2. *c.* 14. 'Any 'Lord of a Manor may, by Writing under 'his Hand and Seal, impower his *Game Keeper* 'to kill any *Game* whatſoever; but if ſuch '*Game-Keeper*, under Colour of ſuch Power to 'kill or take for the Uſe of ſuch Lord, ſell or 'diſpoſe thereof without the Conſent or Know-'ledge of ſuch Lord, and ſhall be convicted 'upon Complaint of ſuch Lord, by the Oath 'of one or more Witneſſes, before a Juſtice 'of Peace, ſuch *Game-Keeper* ſhall be commit-'ted to the Houſe of Correction for three 'Months, and be kept to hard Labour.'

By **Stat.** 9 *Ann. c.* 25. the *Stat.* 5 *Ann. c.* 14. is made perpetual; 'And no Lord of 'a Manor ſhall appoint more than one *Game-*'*Keeper* in one Manor with Power to kill and 'deſtroy the *Game*, and his Name ſhall be en-

'tered with the Clerk of the Peace without 'Fee, who ſhall give him a Certificate thereof, 'paying one Shilling; and if any *Game-Keeper* 'whoſe Name ſhall not be ſo entered, or who 'ſhall not be otherwiſe qualified by the Laws 'of this Kingdom to kill *Game*, ſhall kill, ſell, 'or expoſe to Sale, any Hare, Pheaſant, Par-'tridge, Moor, Heath *Game*, or Grouſe, he 'ſhall, on Conviction before One Juſtice, on 'Oath of One Witneſs, forfeit for every Of-'fence, 5 *l.* Half to the Informer, and Half 'to the Poor, by Diſtreſs: For Want of Diſ-'treſs, to be ſent to the Houſe of Correction for 'three Months for the firſt Offence, and for 'every other Offence, four Months.'

Who ſhall not be otherwiſe qualified]. From theſe Words it ſeemeth clear, that a *Game-Keeper*, who is qualified in his own Right to kill *Game*, need not be entered with the Clerk of the Peace. *Burn*'s Juſtice, 304. Fo. Edit.

'And if any Perſon not being qualified ſo to 'do, or not being truly and properly a Servant 'of any Lord, *&c.* of a Manor, or not im-'mediately employed and appointed to take 'and kill the *Game*, for the Uſe or immediate 'Benefit of the ſaid Lord, *&c.* ſhall under 'Colour or Pretence of any Power or Authority, 'Deputation, or Qualification, to him granted 'by any Lord, *&c.* of a Manor, take or 'kill any Hare, Pheaſant, Partridge, or other '*Game* whatſoever, or ſhall keep or uſe any 'Greyhounds, Setting Dogs, Hays, Lurchers, 'Guns, Tunnels, or any other Engine, to kill

'and

'and deſtroy the *Game*; he ſhall forfeit 5*l.* in 'like Manner as mentioned, *Ann. c.* 25.'

By **Stat.** 3 *Geo.* 1. *c.* 11. 'No Lord or 'Lady of a Manor ſhall appoint any Perſon 'to be a *Game-Keeper*, with Power to kill or 'take *Game*, unleſs ſuch Perſon be qualified 'ſo to do by the Laws of this Realm, or be 'truly and properly a Servant to the ſaid Lord 'or Lady, or be immediately employed and ap-'pointed to take and kill the *Game*, for the 'ſole Uſe of the Lord or Lady, and not 'otherwiſe.

A Commiſſion for a *Game-Keeper*.

GEORGE the Second, *by the Grace of God, of* Great Britain, France *and* Ireland, *King, Defender of the Faith*, &c. **To** *all to whom theſe Preſents ſhall come, Greeting:* **Know ye,** *That we of our ſpecial Grace, and by the Advice and Conſent of the Chancellor and Council of our Duchy of Lancaſter, have appointed, authorized, and impowered, and by theſe Preſents do for us, our Heir and Succeſſors, appoint, authorize, and impower our truſty and well beloved* H. M. *of our County of* S. *Gent. to be* Game-Keeper *of and within our Manors of* H. *and* P. *with their and every of their Royalties, Members and Appurtenances in our ſaid County, during our Pleaſure*; And *we do hereby give and grant unto him the ſaid* H. M. *during our Pleaſure, full Power and Authority to ſeize and take all and all Manner of Guns, Bows, Greyhounds, Setting Dogs, Lurchers, and other Dogs, Trammels, Lowbels, Hays or other Nets, Hare-*

pipes, Snares or other Engines for taking Conies, Hares, Pheaſants, Partridges or other Game; *and alſo all and all Manner of fiſhing Nets, Angles, Leaps, Pipes and other Inſtruments, or Engines for taking of Fiſh, uſed and imployed within the ſaid Manors or either of them, or the Royalties, Members and Precincts thereof, by any Perſon or Perſons whatſoever, prohibited by the Laws of this Realm in any wiſe to uſe, imploy and keep the ſame, as any other* Game-keeper *may lawfully do.* And *further we do hereby for us, our Heirs and Succeſſors, give and grant unto the ſaid* H. M. *during our Pleaſure, full Power and Authority to do all and every Act or Acts, Thing or Things, which and as by the Law of this Realm are requiſite and neceſſary for the Preſervation of our* Game *within our ſaid Manors and Precincts, and for the Diſcovery of Offenders therein againſt the Laws and Statutes in that Caſe made and provided.* And *laſtly, we do hereby command all Mayors, Bailiffs, Juſtices, Conſtables and all other Perſons whatſoever, whom it may concern, that they be diligently aiding and aſſiſting unto him the ſaid* H. M. *in the due Execution of this Commiſſion.* Given *at our Palace,* &c.

A Deputation for a *Game-Keeper*.

Vide Stat. 22 & 23 Car. 2. c. 25. ſ. 2. — 5 Ann. c. 14. ſ. 4. — 3 Geo. 1. c. 11. ſ. 1.

TO all *People whom theſe Preſents may concern:* Know ye, *That I* R. P. *of,* &c. *Eſq; Lord of the Manor of* G. *in the County of* H. *do hereby make, nominate, authorize, and appoint*

appoint W. W. *of*, &c. *who is truly and properly my Servant*, [*or*, a Perſon immediately appointed and imployed to take and kill *Game*, for my ſole Uſe and Benefit; *or*, being qualified by the Laws of this Realm to take and kill the *Game*, *as the Caſe is*] *to be my* Game-keeper *within my ſaid Manor, according to an Act of Parliament in that Caſe made in the third Year of the Reign of King* George *the Firſt, during my Will and Pleaſure*; **And** *I do alſo hereby authorize the ſaid* W. W. *by Virtue of another Act of Parliament in that Caſe made, to take away any Hare, Pheaſant, Partridge or any other* Game, *which he ſhall find in the Cuſtody of any Perſon or Perſons within my ſaid Manor, not being duly qualified to kill the* Game; **And** *alſo to ſeize and take away, for my Uſe, all Greyhounds, Setting Dogs, Lurchers or other Inſtruments for the Deſtruction of the* Game, *from any Perſon or Perſons within my ſaid Manor, not being duly qualified to uſe the ſame*: **And** *further to act and do all and every Thing and Things which belong to the Office of a* Game-Keeper, *purſuant to the ſeveral Acts of Parliament made for the Preſervation of the* Game. **Given**, &c.

The Entry of it with the Clerk of the Peace.

June 6, 1735.

Huntingdon, *to wit.* } BE it remembered, *That the Day and Year above-written, the within Deputation from* R. P. *Eſq*; *to*

his Game-Keeper W. W. *was entered by me* W. C. *Clerk of the Peace for the ſaid County, on Behalf of the ſaid* R. P. *according to the Direction of the Statute.*

W. C. Clerk of the Peace.

The Clerk of the Peace's Certificate.

June 6, 1735.

Hunt'don, *to wit.* } THESE *are to certify, That the Day and Year above-written, the Deputation from* R. P. *Eſq; to his* Game-Keeper W. W. *was duly entered by me* W. C. *Clerk of the Peace for the ſaid County, according to the Direction of the Statute in that Caſe made.*

W. C. Clerk of the Peace.

His Fee by Statute 9 *Ann.* is one Shilling.

A Mittimus *of a* Game-Keeper *to the Houſe of Correction, for diſpoſing of the* Game, *on* 5 Ann. *c.* 14.

To the Conſtable of *&c.* and to *D. F.* Keeper of the Houſe of Correction.

Huntingdon, *to wit.* } WHereas W. W. *of*, &c. *being impowered under the Hand and Seal of* R. P. *Eſq; Lord of the Manor*

Manor of G. *in the ſaid County, to kill* Game *in his ſaid Manor, and did on the next Day ſell the ſame to* A. S. *of*, &c. *without the Conſent or Knowledge of the ſaid* R. P. And whereas *the ſaid* W. W. *hath on the Day of the Date hereof, and upon the Complaint of the ſaid* R. P. *been duly convicted before me of the ſaid Offence, by the Oath of* G. A. *of*, &c. Theſe are therefore *to require you to convey the ſaid* W. W. *to the Houſe of Correction, at*, &c. *and to deliver him to the Keeper thereof, who is hereby required to receive him into his Cuſtody, and ſafely to keep him in the Houſe of Correction, for the Space of three Months next enſuing, there to be kept to hard Labour.* Given under my Hand and Seal, *&c.*

A Warrant to levy 5 *l.* upon one (not qualified) for killing a Hare, under Pretence of being a *Game-Keeper*. (3 *Geo.* 1. *c.* 11. 5 *Ann. c.* 14. *ſect.* 2. 9 *Ann. c.* 23.)

To the Conſtable of, *&c.*

Middleſex, *to wit.* WHEREAS A. B. *of* D. in *the County aforeſaid, Yeoman, was on the Day of the Date hereof duly convicted before me* E. M. *Eſq; one of his Majeſty's Juſtices of the Peace for the ſaid County, upon the Oath of* * J. W. *of*, &c. *that he the ſaid* A. B. *did on the Day of this Inſtant* May, *at* D. *aforeſaid, and*

* One Credible Witneſs.

within

within the Manor of the said J. W. *kill* † *one Hare not being qualified by the Law so to do, and not being truly imployed by him to take or kill any* Game *for his sole Use and Benefit; by Reason whereof he the said* A. B. *hath forfeited* 5 l. *pursuant to the Statutes in that Case made and provided: These are therefore to require you forthwith to levy the said Sum of* 5 l. *on the Goods and Chattels of the said* A. B. *by* * *Distress and Sale thereof; and that you pay one Moiety thereof to the said* J. W. *who first informed me of the said Offence, and the other Moiety to the Overseers of the Poor of the Parish of* D. *where the said Offence was committed, for the Use of the Poor thereof.* Given, *&c.*

Note; A Conviction upon the *Game* Acts must aver the Want of Qualifications particularly, as Degree, Estate, *&c.* 2 Ld. *Raym.* 1415. See *Lucas*, 26, 27.

A Conviction for killing *Game*, not being qualified, was quashed, because it was only said that the Party was not *qualified*; but did not shew particularly, in what respect he was not qualified. *King* and *Marriot*.

Glandage, Mastage; the Season of turning Hogs into the Woods in Mast-time.

Greyhounds, In *Saxon* Enizhunt. An Action was brought against the Defendant for killing a Brace of the Plaintiff's *Greyhounds*. The

† Or keep a Greyhound or Setting Dog, as the Case is.

* If no Distress, then to the House of Correction for three Months.

De-

Defendant juſtifies, for that the *Greyhounds* did chaſe a Deer in his Park, and killed him there; and to prevent further Harm, he took the ſaid *Greyhounds* and killed them. The Plaintiff replied, That the Deer was out of the Defendant's Park upon the Plaintiff's Land and feeding on his Graſs; that he looſed the *Greyhounds* to chaſe him off his Land; that they purſued the Deer in the Park, and there killed him. To this the Defendant demurred, and upon Argument it was adjudged, that the Replication was naught, becauſe he does not ſay, That he did his Endeavour to ſtop the *Greyhounds* at the Park-ſide, and prevent their Entrance therein: But then it was objected, that the Bar was naught; for though it was unlawful to chaſe in his Park, yet when the Defendant had taken the *Greyhounds*, he ought not to have killed them: And for this was cited 2 *Roll. Abr.* 567. *Lewis*'s Caſe; againſt which was cited 2 *Cro.* 44. *Wadhurſt* againſt *Damme*. Afterwards, upon Conſideration of both theſe Books, Judgment was given for the Defendant. 3 *Lev.* 28.

A Declaration for Keeping and uſing *Greyhounds*, not being qualified. (5 *Ann. c.* 14. 8 *Geo.* 1. *c.* 29.)

Southampton, } J. D. *Gent. who as well for*
to wit. } *himſelf, as the Poor of the Pariſh of* W. *in the County aforeſaid, in this Behalf proſecutes, complains of* B. J. *in the Cuſtody of the Marſhal,* &c. *of a Plea, that he render to him*

him the ſaid J. D. *and to the ſaid Poor of the ſaid Pariſh of* W. 5 l. *which the ſaid* J. D. *and the ſaid Poor of the ſaid Pariſh he owes, and unjuſtly detains; for that,* to wit, *That whereas the ſaid* B. *the* 20th *Day of* October *in the Year of the Reign,* &c. *and ſo forth, at the ſaid Pariſh of* W. *in the County aforeſaid, uſed two* Greyhounds *to kill and deſtroy the Game, againſt the Form of the Statute in that Caſe lately made and provided; he the ſaid* B. *not being qualified ſo to do according to the Laws of this Realm; by which and by Force of the Statute in that Caſe lately made and provided, the Action accrued to the ſaid* J. *as well for himſelf, as for the ſaid Poor of the ſaid Pariſh of* W. *in the County aforeſaid, to have and receive from the ſaid* B. *the aforeſaid* 5 l. *yet the ſaid* B. *although often requeſted, the ſaid* 5 l. *to the ſaid* J. *who as well, and ſo forth, hath not rendered, but the ſame to the ſaid* J. *who as well, and ſo forth, to render hath hitherto altogether refuſed; wherefore the ſaid* S. *who as well, and ſo forth, ſaith he is prejudiced, and hath Damage to the Value of* 10 l. *and for that, as well for himſelf as for the Poor of the ſaid Pariſh of* W. *he brings his Suit.*

Grouſe or Moor Game.

By **Stat.** 1 *Jac. c.* 27. *ſ.* 2. 'Every Perſon who ſhall ſhoot at, kill or deſtroy, with 'any Gun or Bow, any *Grouſe*, Heath Cock, 'or *Moor Game*, ſhall, on Conviction before 'two Juſtices, by Confeſſion, or Oath of two 'Witneſſes, be committed to Gaol for three 'Months, unleſs upon Conviction he pay to 'the Churchwardens, for the Uſe of the Poor

'20 *s.* or, after one Month after his Commitment, become bound by Recognizance with 'two Sureties in 20 *l.* each, before two Juſtices, 'not to offend again in like Manner; the Recognizance to be returned to the next Seſſions.

By **Stat.** 9 *Ann. c.* 25. *ſ.* 3. 'If any Perſon whatſoever ſhall take or kill any *Moor*, '*Heath Game*, or *Grouſe*, in the Night-time, 'he ſhall, on Conviction before one Juſtice, on 'Oath of one Witneſs, forfeit 5 *l.* Half to the 'Informer, and Half to the Poor, by Diſtreſs; 'for Want of Diſtreſs to be ſent to the Houſe 'of Correction three Months for the firſt Offence, 'and for every other Offence four Months.' See 'Stat. 4 & 5 *W.* & *M. c.* 23. and 5 *Ann. c.* 14. 'Tit. **Game.**

Guard, Signifies the principal Officers of the Foreſt. 4 *Inſt.* 293.

Guns and Crofs-Bows. By **Stat.** 33 *Hen.* 8. *c.* 6. 'None ſhall ſhoot in, or keep in 'his Houſe, any Croſs-bow, *Hand-gun*, Hagbut 'or Demi-hake, unleſs his Lands be of the 'Value of 100 *l. per Annum*, on Forfeiture of '10 *l.* for every Offence; nor ſhall ſhoot in 'any *Hand-gun* under the Length of one 'Yard, nor Hagbut or Demi-hake of three 'Quarters of a Yard long, on the like Penalty; 'and any Man, having Lands of 100 *l. per* '*Annum*, may ſeize any ſuch *Gun* or Croſs-bow 'uſed contrary hereto; but he muſt break them 'in twenty Days after, on Pain of 40 *s.* and 'none ſhall travel with a Croſs-bow bent or '*Gun* charged, except in Time of War; or 'ſhoot within a Quarter of a Mile of a City,

'Borough

'Borough or Market-Town, except in Defence 'of himſelf or his Houſe, or at a dead Mark, 'in Pain of 10*l.* and none ſhall command his 'Servant to ſhoot in a *Gun* or Croſs-bow, ex- 'cept as above, on the like Penalty; the above 'Penalties to be divided between the King and 'the Proſecutor.'

'But the Followers of Lords Spiritual and 'Temporal, Knights, Eſquires, Gentlemen, 'Inhabitants of Cities, *&c.* and thoſe that 'dwell two Furlongs diſtant from a Town, 'may keep in their Houſes, and ſhoot (at a 'dead Mark only) with *Guns* not under the 'above Lengths.'

'Perſons impowered by the King to take 'away *Guns*, *&c.* in Foreſts, *&c.* may re- 'tain the ſame; and Smiths and Merchants, 'that make and ſell *Guns*, may keep them in 'their Houſes, the ſeveral Lengths above be- 'ing duly obſerved.'

'Any Perſon may convey the Party of- 'fending againſt this Act before the next Ju- 'ſtice of Peace, who may commit him to Priſon 'till the Penalty is ſatisfied, which in this Caſe 'ſhall be divided between the King and him 'who takes the Offenders.'

'Juſtices in Seſſions, and Stewards of Leets 'have Power to hear and determine theſe Of- 'fences; and when the Conviction is in the 'Seſſions, the whole Forfeiture ſhall go to the 'King: When in a Leet, one Half is the King's, 'and the other ſhall be divided between the Lord 'and the Proſecutor.'

'If

'If a Jury wilfully conceal any Thing, the 'Juſtices or Steward have Power to impanel 'another Jury, by whom, if the firſt Jury be 'found guilty of Concealment, they ſhall for-'feit 20 *s.* a-piece, *viz.* to the King if in Seſ-'ſions; but if in a Leet, one Half to the 'Lord, the other to the Proſecutor.'

'Forfeitures ariſing by this Act ſhall be 'ſued for by the King within one Year, and 'by a common Perſon within ſix Months, other-'wiſe they ſhall be loſt.'

'A Servant may by Command uſe his 'Maſter's Croſs-bow or *Gun*, ſo as he ſhoot 'at no Fowl, Deer or other Game: And 'any Owner of a Ship may keep a *Gun*, but only 'to uſe it in the Ship.'

By **Stat.** 3 *Jac.* 1. *c.* 13. *ſ.* 5. 'If any Per-'ſon not having 40 *l. per Annum* in Lands or 'Hereditaments, or not worth in Goods 200 *l.* 'ſhall uſe any *Gun*, Bow or Croſs-bow, to kill '[Deer or] Conies, or ſhall keep any Ferrets, 'or Coney Dogs (except he have Grounds in-'cloſed for keeping of Conies, the Increaſing 'of which ſhall amount to 40 *s.* a Year to be 'let, and except Warreners in their Warrens) it 'ſhall be lawful for any Perſon, having Lands 'worth 100 *l. per Annum*, to take ſuch *Gun*, *&c.* 'from any ſuch Perſon, and convert the ſame to 'his own Uſe'.

By 22 *&* 23 *Car.* 2. *c.* 25. 'Perſons not 'having Lands, or ſome other Eſtate of In-'heritance in their own or their Wives Right 'of 100 *l. per Annum*, or for Life or Leaſe 'of 99 Years of 150 *l. per Annum*, other than

'the

'the Son and Heir of an Esquire, or other 'Person of higher Degree, and Owners and 'Keepers of Forests, Parks, Chases, or Warrens 'stocked with Deer or Conies for their necessary 'Use, in respect of the said Forests, &c. are 'declared to be Persons not allowed to keep any 'Guns, Bows, &c.'

Vide Stat. 5 *Ann.* Tit. **Dogs.**

The Form of a Conviction * upon the Statute 33 *H.* 8. before one Justice.

[Prosecution by the King to be within a Year; by any other Person within six Months.]

Sussex, } **BE it remembered,** *That this 6th*
to wit. } *Day of* Febuary *instant, in the seventh Year of the Reign of our Sovereign Lord* George *the Second, by the Grace of God, now of* Great Britain, France *and* Ireland, *King, Defender of the Faith, and so forth,* J. R. *of* H. *in the County aforesaid, Labourer, came before me* J. C. *Esq.; the next Justice of our said Lord the King, assigned to keep his Peace in the County aforesaid; and then and there upon his Oath said and deposed, That* W. P. *late of* H. *aforesaid, in the County aforesaid, Yeoman, the first Day of* January *in the said seventh Year of the Reign, and so forth, at* H. *aforesaid, in the County aforesaid, had and kept a* Hand-gun, *and then and there, with the* Hand-gun *aforesaid, charged with Gun-powder and Hail-Shot, unlawfully and unjustly did shoot, against the Form of the Statute in that Case made and pro-*

* *See* Dalt. *c.* 47.

vidid;

vided; the ſaid W. P. *not then having in his own Right, or in Right of his Wife, or for the Uſe of the ſaid* W. P. *or any other Perſon or Perſons having to the Uſe of the ſaid* W. P. *any Lands or Tenements in Fee, Annuity or Office, of the yearly Value of one hundred Pounds: And foraſmuch as that the aforeſaid* W. P. *being taken and brought before me the aforeſaid next Juſtice, by the ſaid* J. R. *for the Offence aforeſaid, and charged with the ſaid Offence in Manner aforeſaid, could not deny the ſame:* **Therefore** *it is conſidered by me the aforeſaid next Juſtice, That the ſaid* W. P. *hath forfeited the Sum of* 10 l. *according to the ſaid Statute in that Caſe made and provided; Half of which ſaid Sum of* 10 l. *is to be paid to the Uſe of our ſaid Lord the King, and the other Half to be paid to the ſaid* J. R. *he being the firſt Bringer of the ſaid* W. P. *before me the ſaid next Juſtice for the Offence aforeſaid, according to the Direction of the Statute aforeſaid; And that the aforeſaid* W. P. *be committed to the Gaol of the County aforeſaid, there to remain until he hath paid the ſaid* 10 l. *to the Uſes aforeſaid, according to the Direction of the ſaid Statute.*

No Replevin of Goods taken upon a Conviction, Str. 1184. See **Replevin.**

A Declaration in Debt for ſhooting with a *Gun* not being qualified. (*Stat.* 8 *Geo.* 1.)

Huntingdon, *to wit,* } A. J. *late of* S. *in the ſaid County, Yeoman, was attached to anſwer to the Lord the King, and* W. H. *who as well for the ſaid Lord the King as for himſelf*

self in this Behalf prosecutes, of a Plea, that he render unto the said Lord the King and the said W. *who as well and so forth,* 10l. *of lawful Money of* Great Britain, *which to the said Lord the King and the said* W. *who as well, and so forth, he owes and unjustly detains, and so forth; by* H. H. *his Attorney, saith, That whereas the said* A. *the sixth Day of* January *in the seventh Year of the Reign of the said Lord the now King, not having in his own Right, or in Right of his Wife, or for the Use of the said* A. *or any other Person or Persons having to the Use of the said* A. *any Lands or Tenements in Fee, Annuity or Office, of the yearly Value of one hundred Pounds, had and kept a certain* Gun, *and then and there loaded or charged the said* Gun *with Gun-powder and Shot, and did shoot therewith against the Form of the Statute in that Case made and provided; by which and by Force of the said Statute the said* A. *forfeited ten Pounds for the said Offence; whereby and by Force of the Statute in that Case made and provided, the Action accrued to the said Lord the King and the said* A. *who as well, and so forth, to have and receive from the said* A. *the said* 10 l. *yet the said* A. *although often requested, the said* 10 l. *to the said Lord the King and the said* W. *who as well, and so forth, hath not rendered, but the same to them hitherto to render hath altogether refused, and still doth refuse; Wherefore the said* W. *who as well, and so forth, saith, that he is prejudiced, and hath Damage to the Value of* 20 l. *and therefore as well for the said Lord the King, as for himself, he brings his Suit.*

Law

Law Caſes.

One *Cole* being brought before a Juſtice of Peace upon a Warrant againſt him for *ſhooting in a Gun*; and upon Examination and Proof being convicted thereof, he was committed till he ſhould pay 10*l.* one Moiety to the Crown, the other to the Informer; and the Juſtice having made a Record of the Conviction, it was certified into *B. R.* upon the Return of a *Habeas Corpus*; and adjudged, that if the Statute 33 *H.* 8. *c.* 6. is rightly purſued, no Court could diſcharge the Offender without paying the Forfeiture. *W. Jones* 170.

A Conviction was certified into *B. R.* againſt one for *ſhooting in a Hand-gun*, not being qualified according to Statute 33 *H.* 8. by which Statute the Juſtice of Peace hath Authority to commit the Offender upon due Examination and Proof; and now it was inſiſted for the Defendant, that the Proof of this Offence ought to be made by a Jury, and not by a Witneſs before a Juſtice of Peace; but it was adjudged, that in this Caſe Proof might be made by Witneſſes, and not to a Jury, and that no Writ of Error lies upon this Conviction. *The King* againſt *Saunders*, 1 *Vent.* 53, 39. *Sid.* 491. S. C. 1 *Sand.* 262. S. C.

The Deſendant was convicted before a Juſtice of Peace for keeping a *Gun*, not having 100*l. per Annum*, according to the Statute 33 *Hen.* 8. and now the Record of this Conviction being removed into *B. R.* it was objected, that the Words in the Indictment were, *non habuiſſet* 100*l.*

100 *l. per Annum* generally, but did not ſet forth when; for he might have 100 *l. per Annum* when he kept the *Gun*, though not at the Time when he was convicted; but it was anſwered, that the Word *habuiſſet* ſhall relate to all Time, and 'tis as much as to ſay *nunquam habuiſſet*; and the Indictment concluding *contra formam ſtatuti*, that Concluſion muſt explain any doubtful Words; but it was adjudged, that this being a Conviction before a Juſtice of Peace, the Time when the Offence was committed ſhould be alledged with the utmoſt Certainty, (*viz.*) that the Defendant on ſuch a Day and in ſuch a Year had not 100 *l. per Annum*; and for this Reaſon the Indictment was quaſhed. *The King* againſt *Silcox*, 3 *Mod.* 281.

The Defendant was indicted upon the Statute 33 *H.* 8. for ſhooting in a *Hand-gun*, and killing two *Lepos*, (inſtead of *Lepores*;) it was objected that the Indictment was ill, becauſe it did not ſet forth, that the Defendant was not worth 100 *l. per Annum*; but this Objection was not allowed, becauſe if he was worth ſo much, he might have ſhewed it in order to his Acquittal; but this Indictment was quaſhed for theſe Reaſons, (*viz.*) becauſe it ſet forth, that the Defendant killed two *Lepos*, when it ſhould have been *Lepores*; and for that the Caption was *ad Seſſionem pacis Domini Regis* [*at the Seſſions of the Peace of the Lord the King*], and did not ſay *nunc Regis* [*now King*], *&c.* *The King*, againſt *Wolfe*. 2 *Keb.* 582.

The Defendant was convicted upon the ſaid Statute 33 *H.* 8. for having a *Gun* in his Houſe when

when the Words of the Statute are againſt keeping a *Gun* in his Houſe or elſe-where, and probably this *Gun* might be lent to the Defendant; therefore this being upon a penal Statute, the Words thereof ought to be purſued, for which Reaſon this Conviction was quaſhed. *The King* againſt *Lueling*, *Shower's Rep.* 48.

It hath been a Queſtion, whether an Indictment will lie upon the Statute 33 *H.* 8. in the Seſſions for ſhooting in a *Gun*; 'tis true, the Juſtices have Power by their Commiſſion to puniſh Offences againſt the Peace; but ſhooting in a *Gun* is not ſuch an Offence, 'tis only the Defect of the Qualification of the Perſon which makes it criminal. *The King* againſt *Alſop*, 4 *Mod.* 49.

Note; It was ſaid in *Bullock*'s Caſe, that a ſingle Juſtice cannot convict upon the Statute 33 *H.* 8. unleſs the Offender is brought before him *inſtanter* [*inſtantly*] after the Offence committed. *The King* againſt *Bullock*, 4 *Mod.* 145.

Two Indictments, one was preferred againſt the Defendant for keeping a *Gun*, and the other for ſhooting in it; but they were both quaſhed, becauſe the Diſability of the Perſon was not rightly ſet forth. *Hill.* 9 *W.* in *B. R.*

An Indictment ſet forth, that the Defendant had eight Nets and two *Guns*, with which he had deſtroyed the Game, on Motion to quaſh the ſame, two Exceptions were taken. Firſt, the Indictment does not mention he was not qualified. 2. 'Tis not indictable, ſince it was no Offence at Common Law. 2 *Salk.* 460.

King and *Whigg*. Where a new Penalty is given for a Matter which at Common Law was an indictable Offence, as for keeping Swine in a City, which is a Nuſance; then one may either indict, or bring an Action on the Statute for the Penalty; but where the Statute makes the Offence, that Remedy muſt be taken which the Statute gives. *Salk.* 45. Indictments will not lie where there was no Offence at Common Law, becauſe the Statute which has made the Offence, has made it puniſhable in another Manner. 1 *Show.* 398. Judgment for Defendant; the Name of the Caſe is *King* and *Fowlin.*

The Plaintiff brought an Action of Treſpaſs againſt the Defendant for entering his (the Plaintiff's) Houſe and taking away his *Gun*; the Defendant juſtified by Virtue of the Statute 22 & 23 *Car.* 2. [Vide **Qualification**, *p.* and **Game-keeper**, *p.* 130.] ſetting forth, that the Lords of Manors and other Royalties may depute Game-keepers, who by Virtue of ſuch Deputation may ſeize *Guns* within the Precincts of their Manors, *&c.* and that ſuch Game-keepers or any other Perſon may *by a Warrant from a Juſtice*, * ſearch the Houſes of Perſons ſuſpected to keep *Guns*, and ſeize them for the Uſe of the Lord of the Manor; that Sir *E. W.* was ſeiſed in Fee of the Hundred of *Burton*, and of a Court-Leet there, *&c.* and that the Defendant, *by a Warrant of a Juſtice*, entered into the Liberty of *W.* to ſearch in the

* *Vide* the following Caſe.

Manors of *M.* and *W.* and within the Precincts of the Court-Leet and Hundred aforesaid, which were within the Liberty of *W.* and that Sir *E. W.* was Lord of the said Manor, and that the Plaintiff was not qualified to keep a *Gun*; and being suspected to keep one, the Defendant entered his (the Plaintiff's) House, which was *within the said* † *Hundred*, and within the Precincts of the Court-Leet and Liberty of *W.* where he (the Defendant) found the said *Gun*, and seized it, *&c.* and upon a Demurrer to this Justification it was held good, though there was no Occasion for the Defendant to set forth all this Matter, because he acted under a Warrant of a Justice of Peace, therefore he might have pleaded the General Issue; but if he had justified as a Game-keeper only, and without a Warrant, in such Case he must plead specially. *Bowkby* against *Williams*, *Lutw.* 1506.

Trespass for taking away a *Gun*. Defendant justifies as Game-keeper * duly made within ten Miles of *London: Cur.* The Plea is ill, not saying by whom he was made, nor that the Plaintiff was an unqualified Person by the Statute: And Defendant ought to have had a *Warrant from a Justice of the Peace*; and an Authority from the Lord of the Manor is not sufficient. *Trin. 3 W. & M. in B. R. Carpenter* and *Adams*, *Comb.* 183.

† It should be within the said Manor, because the *Gun* was seized to the Use of the Lord of the Manor.

* *Vide* 22 & 23 *Car.* 2. *c.* 25. *sect.* 2. Tit Game-keeper, *p.* 130.

Bluet, qui tam, &c. versus *Needs C. B.*

DEclaration *versus* Defendant, an Attorney of this Court, for 40*l.* Debt; for that he at *Holcomb Regis in Com. Devon*, 28 *Nov.* 1733. did use a *Gun* to kill and destroy the Game, not being qualified so to do by the Laws of the Realm, whereby an Action accrued to Plaintiff to demand 5*l.* Part of the said 40*l.*

Secondly, That 16th of *January* 1733. he did keep another *Gun*, not being qualified, *&c.* by which an Action accrued for other 5*l.*

Thirdly, The same Day he exposed to Sale six Hares, against the Form of the Statute, not being qualified in his own Right to kill Game, whereby an Action accrued to demand 30*l.* Residue of said 40*l.*

Defendant pleads he owes nothing, and moves in Arrest of Judgment.

FIRST, That the first Count is not good, since by the Statute 5 *Annæ*, *c.* 14. §. 4. it is Enacted, That any Persons, not qualified to keep and use any Greyhounds, Setting-Dogs, Hays, Lurchers, Tunnels, or other Engine to kill and destroy the Game, shall forfeit 5*l.* but a *Gun* is not mentioned in the said Act; and therefore when by the Statute 8 *Geo.* 1. it is Enacted, That pecuniary Penalties may be recovered by Action of Debt, *&c.* before the End of the next Term after Offence, *&c.* yet Debt lies

lies not, unleſs the Offence be within the Statute 5 *Ann. c.* 14.

Secondly, It is not ſufficient to ſay he was not qualified, without ſhewing he had not 100 *l.* a Year, or other Eſtate which makes a Qualification.

Thirdly, The Selling ſix Hares together is but one Offence, and by the Statute 9 *Annæ*, *c.* 25. which enacts ſuch Penalties, as on Higlers, *&c.* by 5 *Annæ*, *c.* 14. is inflicted, *viz.* the Sum of 5 *l.* which ought not to be underſtood 5 *l.* for every Hare, Pheaſant, *&c.* but for all ſold at once.

But the Penalty on Higlers, *&c.* by 5 *Ann.* is 5 *l.* for every Hare, Pheaſant, *&c.*

For Plaintiff: As to the firſt *Objection*, a *Gun* is an Engine to deſtroy Game. So as to the ſecond *Objection*, We have exactly purſued the Words of the Act, and if Defendant had been qualified, he muſt ſhew it. *Dyer* 312. *Carth.* 124, 304.

As to the third *Objection*, that all is one Offence, the Statute 9 *Ann.* refers to the 5 *Ann.* which gives 5 *l.* for every Hare.

Per Cur. As to the firſt *Objection*, the Averment of his not being qualified is ſufficient, ſince the Words of the Act are purſued; and the Defendant may come and ſhew his Qualification.

As to the ſecond *Objection*, this is after Verdict, and it is a Matter of Evidence whether a *Gun* be an Engine to kill and deſtroy Game.

And as to the *Third*, the Statute 9 *Ann.* ſaith not he ſhall for every Offence pay 5 *l.* but ſhall

forfeit the Penalty of the Statute 5 *Ann.* on Higlers, and which is 5*l.* for every Hare.

Note; The Jury found 10 *l.* without ſhewing to which of the Offences it is to be applied. *Per Cur.* This being a Debt, the Jury may find Part of the Debt; Judgment for the Plaintiff. *Comyns* 522 to 525.

Note; If a Man ſtands in one County and ſhoots into two or three (as he may in ſome Places) he muſt be convicted by the Juſtice or Juſtices where the Offence was committed *i. e.* where he ſtood when he ſhot, not where the Object was which he ſhot at. *King* and *Alſop*, *Show.* 339.

The Defendant was convicted by the Juſtices at Seſſions on 5 *Ann. c.* 14. *ſect.* 4. that he unlawfully had and kept in his Cuſtody a *Gun*, being an Inſtrument for the Deſtruction of the Game. Motion to quaſh the Conviction, becauſe that ſimply Keeping a *Gun* was not within the Act. *Lee* Chief Juſtice: 'Tis true a *Gun* is mentioned amongſt other Things in 22 & 23 *Car.* 2. *c.* 25. but in 5 *Ann. c.* 14. the Word *Gun* is omitted amongſt the Inſtruments mentioned for the Deſtruction of Game; ſince therefore the Inſtrument, upon the keeping of which this Conviction is grounded, is omitted, and at the End of the Act theſe Words are uſed, 'or other Inſtrument for the Deſtruction of the 'Game,' it muſt mean ſuch as are originally and in themſelves adapted for the Deſtruction of the Game. Lurchers and Greyhounds are expreſly mentioned in the Act, ſo it need not be ſaid they are kept for Deſtruction of the Game.

Probyn

Probyn Juſtice: The Defendant confeſſing he kept this *Gun* for the Deſtruction of the Game, will carry the Conviction no farther than the Words of it extend, and no Penal Law ought to be carried any farther than the Words of the Statute, inaſmuch as every ſuch Law is an Abridgment of a Man's natural Liberty; it muſt be proved that the *Gun* was kept for the actual Killing the Game; and this can be done in no other Way than by ſhewing he did attempt it, and frequently has intended ſo to do; as by proving he run a Hare with his Grey-hound, this would be ſufficient to bring a Man within the Act. When the Court had quaſhed the Conviction, a Gentleman then preſent ſaid, that at the Time of making this Act, Lord *Macclesfield* deſired the Word *Gun* might be omitted and not mentioned among the other Engines deſigned for the Deſtruction of the Game, ſince great Inconveniences would enſue, as none could keep a *Gun* in his Houſe for his Safety. The *King* and *Gardner*, *Trin.* 11 *Geo.* 2. — 2 *Str.* 1098. S. C. and *per Cur.* a *Gun* differs from *Nets* and *Dogs*, which can only be kept for an ill Purpoſe; and therefore they quaſhed the Conviction. *Andr.* 255. *Seſſ.* C. V. 2. 204. — See *Dominus Rex*, v. *Filer*, p. this Work.

Note; At a *Juſtice-Seat* held for the Foreſt of *Windſor*, one *Wheatly* was fined 50 *s.* for carrying a *Gun* in the Foreſt to kill the Deer. *Wheatly*'s Caſe, *W. Jones* 275.

Hampton-Court Chaſe. King *Hen.* 8. intending to make a Foreſt about his Houſe at

Hampton-Court, aſſigned and limited ſeveral Grounds for that Purpoſe, extending over the Lands of ſeveral Freeholders and Copy-holders within the Manors, Townſhips and Villages of *Eaſt* and *Weſt Mulſey*, *Walton*, *Eſher*, *Weybridge*, and Part of *Chobham*; but finding he could not erect either Foreſt or Chaſe over other Men's Grounds, without the Conſent of the reſpective Owners of thoſe Lands; therefore by an Indenture bearing Date 1 *October* in the 29th Year of his Reign, and made between him of the one Part, and Sir *Richard Page*, *Thomas Henage*, Eſq; and ſeveral others, the Owners of the ſaid Lands, on the other Part, it was agreed between them, that the Lands thus intended for a Foreſt ſhould be called *Hampton-Court Chaſe*, but that it ſhould have the like Liberties, Juriſdictions and Pre-eminences, Laws, Statutes and Officers, as any other Foreſt or Chaſe in the Realm; and that all Offences done therein ſhould be puniſhed as if done in any Foreſt or Chaſe whatſoever; and by this Indenture the King did covenant with the ſaid Owners of the Lands, that they might fell and take their Woods, Groves, and Coppices at Pleaſure, without any View of the Officers, and that they might make great Hedges and Fences about their Corn to keep out the Deer; and for a Recompence to them, that the third Part of the Fee-Farm Rent of every Freeholder ſhould from thenceforth be abated, and the Moiety of the Fine of every Heir on his Admittance to a Copy-hold, *&c.* which Indenture being recited in an Act of Parliament made in the

the 31st Year of his Reign, it was accordingly enacted. 4 *Inst.* 301. By the same Act the Manor of *Hampton-Court* was made an Honour, by the Name and Title of the Honour of *Hampton-Court*.

Hare. The *Hare* is a Beast of Forest, and also of Warren, and by the old Foresters was called the King of all Beasts of Venary; but there is little Variety of Terms concerning this Beast, being called the first Year a *Leveret*, the second a *Hare*, and the third a *Great Hare*. The Season for hunting begins at *Michaelmas* and ought to end about the latter End of *February*.

By **Stat.** 14 & 15 *Hen.* 8. *c.* 10. 'No Person, of what Estate, Degree, or Condition he 'be, shall trace, destroy or kill any *Hare* in the 'Snow, with any Dog, Bitch, Bow, nor otherwise, and Justices of Peace in Sessions, and 'Stewards in Leets, have Power to inquire of 'such Offenders, and shall assess upon every 'such Offender 6*s.* 8*d.* which Penalty assessed 'in Sessions shall go to the King; but in the 'Leet to the Lord thereof.'

And by 1 *J.* *c.* 27. *s.* 2. "Every Person who "shall trace or course any *Hares* in the Snow, "shall, on Conviction before *two* Justices, by "*Confession* or Oath of *two* Witnesses, be committed to Gaol for *three* Months, unless he "pay to the Churchwardens for the Use of the "Poor, 20*s.* for every Hare; or after *one* "Month after his Commitment, become bound "by Recognizance with *two* Sureties in 20 *l.* "a piece, before *two* Justices, not to offend "again in like Manner. And every Person

'who ſhall at any Time take or deſtroy any 'Hares, with Harepipes, Cords, or any ſuch 'Inſtruments, or other Engines; ſhall forfeit 'for every *Hare* 20*s.* in like Manner.'

By 22 & 23 *Car.* 2. *c.* 25. *ſ.* 6. 'If any Perſon ſhall be found or apprehended ſetting or 'uſing any Snares, Harepipes, or other like 'Engines, and ſhall be thereof convicted, by 'Confeſſion, or Oath of *one* Witneſs, before '*one* Juſtice, in one Month after the Offence; 'he ſhall give to the Party injured, ſuch Damages, and in ſuch Time, as the Juſtice ſhall 'appoint, and ſhall pay down preſently to the 'Overſeers for the Uſe of the Poor, ſuch Sum 'not exceeding 10*s.* as the Juſtice ſhall appoint; 'which if he ſhall not do, the Juſtice ſhall 'commit him to the Houſe of Correction, not 'exceeding *one* Month.'

By **Stat.** 4 & 5 *W.* & *M. c.* 23. 'Conſtables, Headboroughs and Tithingmen, by 'Warrant of a Juſtice of Peace, may enter 'into and ſearch, in ſuch Manner, and with ſuch 'Power as in Caſe where Goods are ſtolen, or 'ſuſpected to be ſtolen, the Houſes, Outhouſes, 'or other Places belonging to ſuch Houſes of 'ſuſpected Perſons not qualified; and in Caſe 'any *Hare*, Partridge, Pheaſant, Pigeon, Fiſh, 'Fowl or other Game, ſhall, upon ſuch Search 'or otherwiſe, be found, the Offender ſhall be 'carried before a Juſtice; and if he do not give 'a good Account how he came by them, or 'produce the Party of whom he bought the 'ſame, or ſome other credible Perſon to depoſe 'upon Oath ſuch Sale thereof, he ſhall be con-

'victed

'victed of ſuch Offence by the ſaid Juſtice, and 'forfeit for every *Hare*, Partridge, Pheaſant, 'Fiſh, Fowl, or other Game, any Sum not 'under 5 *s.* nor exceeding 20 *s.* to be divided 'betwixt the Informer and the Poor of the 'Pariſh where the Offence was committed, to 'be levied by Diſtreſs and Sale of his Goods, 'rendering the Overplus; and for want of Di-'ſtreſs, the Offender ſhall be committed to the 'Houſe of Correction for any Time not ex-'ceeding a Month, nor leſs than ten Days, 'there to be whipped and kept to hard Labour.' See *Stat.* 5 *Ann. c.* 14. *Tit.* **Dogs.** p. 63. 'And 'if any Perſon not qualified by Law do keep or 'uſe any Bows, Grey-hounds, Setting Dogs, 'Hays, Lurchers, Nets, Tunnels, Lowbells, 'Hare-pipes, Snares or other Inſtruments for 'Deſtruction of the Game, and ſhall be com-'mitted as above, he ſhall be ſubject to the like 'Penalties and Pains as aforeſaid; and if any 'Perſon ſo charged ſhall not before the ſame 'Juſtice give ſuch Evidence of his Innocence 'as aforeſaid, he ſhall be convicted thereof in 'like Manner as the Perſon firſt charged there-'with is hereby directed to be, and ſo from Per-'ſon to Perſon, till the firſt Offender be diſ-'covered.'

'Offenders puniſhed by this Act, ſhall not 'incur the Penalty of any other Law for the ſame 'Offence.'

'Perſons proſecuted at Law for any Thing 'done in Purſuance of this Act, may plead the 'General Iſſue, and give this Act, or any other 'ſpecial Matter in Evidence; and if the Ver-

'dict pass for the Defendant, or the Plaintiffs 'become Nonsuit, or suffer a Discontinuance, 'the Defendant shall recover treble Costs.'

By **Stat.** 9 *Ann. c.* 25. 'If any *Hare*, Pheasant, Partridge, Moor, Heath Game or 'Grouse, be found in the Shop, House or 'Possession of any Person not qualified in his 'own Right to kill Game, or being intitled 'thereto under some Person qualified, the same 'shall be adjudged an Exposing to Sale, within 'the Meaning of 5 *Ann. c.* 14.' [See **Higler**].

'If any Person whatsoever shall take, kill or 'destroy an *Hare*, *&c.* in the Night-time, he 'shall on Conviction before *one* Justice, on 'Oath of *one* Witness, forfeit 5 *l.* Half to the 'Informer, and Half to the Poor, by Distress; 'for want of Distress, to be sent to the House of 'Correction for *three* Months for the *first* Offence, and for every *other* Offence *four* Months.' Same *Stat.*

An Indictment * for tracing a *Hare* in the Snow. [14 & 15 *H.* 8. *c.* 10. 1 *Jac.* 1. *c.* 27.]

Southampton, *to wit.* } THE *Jury*, &c. *upon their Oaths present, That* J. T. *late of* W. *in the County aforesaid, Yeoman, the third Day of* September *in the seventh Year of the the Reign*, &c. *at*, &c. *in the County aforesaid*,

* *Vide* the Cases of the *King* and *Fowlin*, p. 145. and the *King* and *Buck*, p. 163.

on

one Hare *with a Dog did trace, and the ſame* Hare *then and there in the Snow with the ſame Dog did deſtroy and kill, contrary to the Form of the Statute in that Caſe made and provided, and againſt the Peace*, &c.

A Warrant to ſearch for Game. [4 & 5 *W.* & *M. c.* 23.]

To the Conſtable of, *&c.*

Huntingdon, *to wit.* } BY *Virtue of an Act of Parliament in this Caſe made, Theſe are to charge and command you, on Sight hereof, to enter into and ſearch (as for ſtolen Goods) the Houſes, Out-houſes, and all other Places belonging to ſuch Perſon or Perſons, within your Precincts, as are not qualified to kill the Game; and if on ſuch Search you ſhall find any* Hare, *Partridge, Pheaſant, Pigeon, Fiſh, Fowl, or any other Game, then you are forthwith to bring ſuch Perſon or Perſons, in whoſe Cuſtody the ſame ſhall be found, not being lawfully qualified as aforeſaid, before me or ſome other of his Majeſty's Juſtices of the Peace for this County, to be proceeded againſt according to Law.* Given, *&c.*

If you ſhall find any Grey-hound, Setting-Dog, Coney-Dog, Ferrets, Nets, Snares, Guns, or any Inſtruments for Deſtruction of the Game, then by Virtue of an * Act of Parliament in this Caſe alſo made, you are to ſeize them to and for

* 22 & 23 *Car.* 2. *c.* 25.

the

the Uſe of the Lord of the Manor or Royalty where the ſame ſhall be found, and lay an Information before me, to the End that Proſecution may be made according to Law. *Given*, &c.

A Warrant to levy the Penalty. [4 & 5 *W. & M. c.* 23.]

To the Conſtable of, *&c.*

Huntingdon, *to wit.* } *WHereas* J. W. *of your Pariſh, is brought by you before me, (being one of his Majeſty's Juſtices of the Peace for this County) for having in his Cuſtody one* * Hare *which was dead, being found in his Poſſeſſion by you, on your Search, by Virtue of a Warrant under my Hand and Seal, the ſaid* J. W. *not being lawfully qualified to kill the Game; and upon my Examination of the ſaid* J. W. *concerning the Premiſſes, he cannot give any good Account how he came by the ſame, nor produce any credible Witneſs to prove of what Perſon he bought the ſaid* † Hare, *whereby he hath forfeited, for ſuch* ‖ Hare *ſo found upon him, the Sum of* 15 s. [or any Sum not exceeding 20 *s.* nor under 5 *s.*] *one Moiety to the Informer, and the other Moiety to the Poor of your Pariſh, according to an Act of Parliament in that Caſe made in the fourth and fifth Years of the Reign of King* William *and Queen*

* Or two Pigeons (as the Caſe is) which were dead.

† Pigeons.

‖ For each Pigeon.

The Penalties for Fiſh or Fowl to be levied in the ſame Manner.

Mary:

Mary: *These are therefore to authorize and require you, on Sight hereof to levy the ſaid Sum of* 15 s. *by Diſtreſs and Sale of the Goods of the ſaid* J. W. *for the Uſes aforeſaid, returning the Overplus; and what you do herein, you are to certify to me within ſix days.* Given, *&c.*

A Mittimus for want of Diſtreſs. [4 & 5 *W. & M. c.* 23.]

To the Conſtable of, *&c.* and to the Keeper of, *&c.*

Huntingdon, *to wit.* } *WHereas* J. W. *of your Pariſh, is lawfully convicted before me, (being one of his Majeſty's Juſtices of the Peace for the ſaid County) for having in his Poſſeſſion one* Hare *(or as the Caſe is) being killed, he not being duly qualified to kill the Game; and whereas the ſaid* J. W. *hath not ſufficient Diſtreſs, whereon to levy the Fine impoſed on him for this Offence: Theſe are therefore to authorize and require you, on Sight hereof, to convey the ſaid* J. W. *to the Houſe of Correction aboveſaid, and deliver him to the aforeſaid Keeper of the ſame (together with this Precept): Requiring alſo you the ſaid Keeper to receive him into your ſaid Houſe, and there detain him to be whipped and kept to hard Labour for fourteen Days,* [or one Month, but not leſs than ten Days]. Given, *&c.*

Note; The Law as to Pigeons, Fiſh and Fowl, is not altered by 5 *Annæ*.

An

An Information * againſt a Perſon for killing a Hare, &c. on 5 *Ann. c.* 14.

THE *Information of* A. B. *of*, &c. *before* C. D. *Eſq*; *one of his Majeſty's Juſtices of the Peace for the ſaid County, on the* —— *Day of* —— *who ſaith, that on the* —— *Day of* —— E. F. *of* —— *did kill and deſtroy a* Hare *in the Pariſh of* —— *with a Greyhound (or as the Caſe is) the ſaid* E. F. *not being lawfully qualified to kill the Game.*

A. B.

Taken the Day and Year aboveſaid, before me *C. D.*

An Information * for killing a *Hare* in the Night, on the 9 *Ann. c.* 25.

The Information of *H. C.* of, &c. taken before *A. T.* Eſq; one of his Majeſty's Juſtices of the Peace for the County of *Huntingdon*, on the ſeventh Day of *October* 1735.

THE *ſaid Informant, upon his corporal Oath, ſaith, That* W. G. *of*, &c. *did in the Night which was between the firſt and ſecond Days of this inſtant* October, *kill and deſtroy one* Hare *in*

* An *Indictment* lies not for killing a *Hare*. See *poſtea*, P. 163.

a Field

a Field called C. *in the Parish of* S. *in the County aforesaid, contrary to the Statute in that Case made and provided.*

Affidavit made by a credible Person who saw the *Hare* killed.

R. K. *of*, &c. *maketh Oath, That he this Deponent saw the said* W. G. *in the Information named, kill and destroy one* Hare, *as in the Information mentioned; and this Deponent further saith, that the said Information touching the same, given by* H. C. *aforesaid, and every Part thereof, is true.*

R. K.

Sworn the Day and Year above-said before me *A. T.*

Law Cases.

If a Man hunt and kill a *Hare* in the Forest, the Forester may apprehend him, because it is a Trespass in the Venison in the King's Forest: For Proof whereof, it appeareth in the *Assizes of the Forest of* Pickering, *fo.* 13. That two Men were indicted, *viz.* one *Bulmer*, for striking a *Hare* in her Form; and another Man for taking a *Hare* in the *Forest*: One of them was committed and fined for the said Offence, and was bound to his good Behaviour in the Forest; and the other was outlawed. *Manwood* 175.

Chief Justice *Holt* delivered it for Law in *Sutton*'s Case, that where a Man starts a *Hare* in

in another Man's Grounds, and kills it there, 'tis the *Hare* of the Owner of the Ground, becauſe he hath a local Property in the *Hare*; but if it is hunted into the Ground of another and killed there, in ſuch Caſe 'tis the *Hare* of the Hunter. *Sutton* againſt *Moody*, 2 *Salk* 55. 1 Ld. *Raym.* 251.

Treſpaſs, for that he entered into his Warren, and took 100 *Hares*, and doth not ſay, *his*, yet it is good. 3 *H.* 6. *fol.* 58. *Kitchen* 118.

A Conviction *ſuper præmiſſis* for three Penalties of 5 *l.* each for killing three *Hares*, where it appears it was done the ſame Time, is bad, for the * Statute does not give 5 *l.* for every *Hare*, it being but one Offence, for all was done the ſame Day. *Marriot* verſus *Shaw & al. Mich.* 4 *Geo. Comyns* 274.

On a Conviction, Exception was taken, that the Perſon was charged with ſo many 5 *l.* as he had killed *Hares* in the *ſame* Day. *Cur.* was of Opinion, that the Offence for which the Statute * gave the Forfeiture, was the keeping Dogs and Engines, and not killing the *Hares*. If a Man not qualified goes a hunting, and kills never ſo many *Hares* on the *ſame* Day, he would forfeit but one 5 *l.* for it is but one Offence; but if a Man keeps Dogs, and goes a hunting ſeveral Days, and kills *Hares*, if it was thus laid, that he, ſuch a Day kept Dogs and killed, and then again ſuch a Day, by laying thus ſeverally, the Offence is ſevered, and he ſhall forfeit 5 *l.* for each Offence. *Lucas*'s Rep. 26.

* 5 *Ann. c.* 14.

The

The Defendant was indicted for killing an *Hare*; and upon Motion the Indictment was quashed, because the Stat. 5 *Ann c.* 14. which makes this an Offence, appoints a particular Method of punishing it in a summary Way, before a Justice of Peace. *Mich.* 12 *Geo.* 1. *Rex* v. *Buck. M. S. Rep.* — 1 *Str.* 679. S. C. says *Hil.* 12. *Geo.* 1.

Hart, In *Saxon* Heort, Is the most noble and worthiest of the Beasts of Venary, and is called the first Year a *Hind-Calf* or *Calf*, the second a *Brocket*, the third a *Spayad*, the fourth a *Staggard*, the fifth a *Stag*, the sixth a *Hart*; and if afterterwards he is hunted by the King, and escapes alive, he is called a *Hart-Royal*; and if in hunting he is driven out of the Forest, so far that he is not likely to return of himself, and the King giveth over hunting him then, because he had made such Sport, he causeth a Proclamation to be made in all the Towns and Villages near the Place, to which he was pursued and hunted, that no Person should kill, hurt or hunt him, and appoints certain Foresters to look after him till he returns to the Forest, and afterwards he is called a *Hart-Royal-proclaimed*. The Time of Grace or Season of a *Hart* begins at *Midsummer* and lasteth till *Holy-Rood-Day*. *Manwood* 180, 190. See *Hind*.

Hawk and **Hawking**; A *Hawk* in *Saxon* is called Hapoc, and is a Bird of Prey, which when reclaimed affords a noble Recreation.

By **Stat.** 34 *E.* 3. *c.* 22. 'A *Hawk* taken 'up shall be delivered to the Sheriff, who after 'Proclamation made in the good Towns of the

'the County, ſhall deliver it (if challenged) to 'the right Owner.'

'If the *Hawk* was taken up by a mean Man, 'and not challenged afterwards within four 'Months, the Sheriff ſhall retain the *Hawk*, 'ſatisfying the Perſon for taking it up; but 'if taken up by a Man of an Eſtate, who might 'keep a *Hawk*, the Sheriff ſhall reſtore it to 'him, upon anſwering the Charge of keeping 'the *Hawk*.'

By * **Stat.** 37 *Ed.* 3. *c.* 19. 'He who 'ſteals and carries away a *Hawk*, or conceals 'it after Proclamation made by the Sheriff, not 'obſerving the aforeſaid **Stat.** 34 *Ed.* 3. ſhall 'be a Felon. Clergy allowed.'

My Lord *Coke* in his 3 *Inſt.* tells us, that the aforeſaid Statute 37 *Ed.* 3. extends only to *long-winged Hawks*, and not to *Goſhawks*; and that it is not material, whether they have *Vervels* on or not, ſo as they are really reclaimed; but before that Statute was made, it was Robbery to take either a *long-winged or ſhort-winged Hawk* from the Perch, or from the Party; but it was not Felony to find and conceal them, before this Statute. 3 *Inſt.* 27.

By **Stat.** 11 *Hen.* 7. *c.* 17. 'No Man ſhall 'bear any *Hawk* of the Breed of *England* called 'a *Nyeſſe*, *Goſhawk*, *Taſſel*, *Laner*, *Laneret*, or '*Faulcon*, on pain of forfeiting his *Hawk* to the 'King; and if he bring any of them over Sea, 'or out of *Scotland*, he ſhall bring a Certificate

* *N. B.* This Statute, tho' in Print, is not of Record in the Roll of Parliament. 4 *Inſt.* 51.

'thereof

'thereof from the Officer of the Port or War-'den of the March, on the like Pain of for-'feiting the ſame to the King. And the Perſon 'that bringeth ſuch *Hawk* to the King, ſhall 'have a reaſonable Reward of the King, or 'elſe for his Labour.'

'None ſhall take, kill or fright away any of 'the *Hawks* above-mentioned from the Coverts 'where they uſe to breed, in Pain of 10 *l.* to 'be recovered before the Juſtices of the Peace, 'and divided between the King and Proſecutor'. Same *Stat.*

By **Stat.** 5 *El. c.* 21. *ſ.* 3. 'If any Per-'ſon ſhall take away any *Hawks* or their Eggs, 'by any Means unlawfully, out of the Woods 'or Grounds of any Perſon, and be thereof 'convicted at the Aſſizes or Seſſions, on Indict-'ment, Bill or Information, at the Suit of the 'King or of the Party, he ſhall be impriſoned 'three Months and ſhall pay Treble Damages; 'and after the three Months are expired, ſhall 'find Sureties for his good Abearing for ſeven 'Years, or remain in Priſon till he doth.'

A Man may have a Writ of Treſpaſs for taking his young * *Hawks.*

* Yet for taking a *Hawk* (reclaimed) he ſhall not have Treſpaſs, but Trover and Converſion. *Quære.* 2 *Lev.* 201. 1 *Salk.* 667, *&c.* And the Count ought to be, that he is reclaimed; and it is not ſufficient to ſay he was poſſeſſed of him as of his proper Goods. *Dyer* 306. Sir *Mat. Hale*'s Commentary on *Fitzherb.* 196.

The

The Form of the Writ.

THE *King to the Sheriff*, &c. *If* A. &c. *then put by Sureties and ſafe Pledges* B. *ſo that he be before us on Tueſday next after the Morrow of* All-Souls, *whereſoever we then are in* England, [if returnable in the Common Pleas, then thus,] *before our Juſtices at* Weſtminſter, *on the Morrow of* All-Souls, *to ſhew wherefore with Force and Arms the Wood of him the ſaid* A. *at* N. *he entered, and three of his young* Hawks *of great Price, lately in the ſame Wood in a Net hatched, he took and carried away, and other Enormities did, to the great Damage of the ſaid* A. *and againſt our Peace: And have you there the Names of the Pledges and this Writ.*, Witneſs, *&c.*

N. B. By this Writ it appears, that the Property of the *Hawks* are in him who hath the Land, by the Word *(his)* in the Writ *Fitzherb. New Nat. Brev.* 197.

The Place where *Hawks, &c.* build their Neſts and hatch their young, is called an Ayerie, and is the proper Term; and by *Chart. de Foreſta, c.* 13. every Freeman may have his Ayerie of *Hawks*, Eagles and Herons, and the Honey found in his Woods within the Foreſt.

Law

Law Caſes.

In Treſpaſs for ſtriking and killing *accipitrem ſuum* [*his* Hawk], upon Not guilty pleaded, the Plaintiff had a Verdict; but it was moved in Arreſt of Judgment, that the Declaration was ill, becauſe the Plaintiff did not ſet forth what Sort of *Hawk* it was, *(viz)* whether a *Goſhawk* or a *Lanner*, *&c.* for the Word *accipitrem* in the Declaration is the *Genus*, and therefore the Plaintiff ought to ſhew of what *Species* the *Hawk* was; beſides he did not alledge that the *Hawk* was *reclaimed*, for it being a Bird of Prey, and *feræ naturæ*, no Man can have a Property in it, unleſs it is *reclaimed*; but adjudged, that the Declaration was good, it being *in Treſpaſs, in which a Man may declare upon his Poſſeſſion*, without ſhewing what Sort of *Hawk* it is; neither is it neceſſary in this Action to ſhew that the *Hawk* was *reclaimed*, as 'tis in *Trover*, where the Plaintiff muſt ſhew a Property in the Thing he demands: As for Inſtance; *Trover*, *&c.* for a *Ramiſh Hawk*; upon Not guilty pleaded the Plaintiff had likewiſe a Verdict in this Action; and it was moved in Arreſt of Judgment, that this Declaration was not good, becauſe the Plaintiff had declared for a *Ramiſh Hawk*; which is a *Hawk* living *inter Ramos* [*amongſt the Boughs*], and by Conſequence *feræ naturæ*; and when it flies away, it hath not *animum revertendi*, [*the Senſe of returning*]; and therefore *occupanti conceditur*, [*is not allowed to be in Poſſeſſion*], which is this Defendant's Caſe; for which Reaſon the Plaintiff

Plaintiff ſhould have ſet forth in his Declaration, that the *Hawk* was reclaimed; and it was adjudged accordingly. *Vincent* againſt *Diſney*, *Cro. Car.* 13. *Liſter* againſt *Hone*, *Cro. Car.* 390. *March* 12. S. C.

By Stat. 23 *Eliz. c.* 10. *Hawking* in ſtanding Corn, or before it be ſhocked, is prohibited under Pain of 40 *s.* to the Owner of the Corn, to be recovered by the Owner in any Court of Record.

Heath. In *Henry* II.'s Time, the Inhabitants of this Part of the Foreſt in *Surrey* were fined 100 Marks for burning of *Heath*, for it ſpoileth the Layer of the Deer and diſturbs them. *W. Jones* 276.

Heath-Cock. By **Stat.** 4 & 5 *W. & M. c.* 23. 'For the better preſerving the *Red* and '*Black Game* of *Grouſe*, commonly called '*Heath-cock* and *Heath-Polts*, no Perſon ſhall 'deſtroy the Cover.' See **Grouſe.**

Hedges. One was preſented for ſuffering three Rood of Wood to be ſpoiled with Cattle: He came and ſhewed, that the Fence through which the Spoil came, belonged to another Man to make, and the Spoil was in his Default. But Mr. *Attorney* ſaid, That it being within the Foreſt, he whoſe Wood is in Danger to be ſpoiled, ought to requeſt the other to make the *Hedges*; and if he refuſe then he muſt do it himſelf, and have an Action on the Caſe againſt the other that ought to have done it. *W. Jones* 277.

Heron. By **Stat.** 19 *Hen.* 7. *c.* 11. 'No 'Perſon, except out of his own Ground, ſhall

'take

'flee, take, or cauſe to be taken, by means of 'Craft or Engine, any *Herons*, unleſs it be 'with Hawing or a Long-bow, on Pain of 6*s*. '8*d*. to him that will ſue for the ſame, by Action 'of Debt, or otherwiſe; and any two Juſtices of 'Peace in Seſſions may examine the Offenders, 'and commit them to Priſon till they have 'found Sureties for the Payment of the Forfei-'ture to the King; and the ſaid Juſtices are to 'have the Tenth, of the Forfeiture.'

'And no Perſon, without his own Ground, 'ſhall take any young *Herons*, out of the Neſt, 'on Pain of 10*s*. in like Manner for every 'young *Heron*.' Same *Stat*.

For more concerning *Heron*, ſee *Stat*. 25. *H*. 8. *c*. 11. Tit. **Eggs**. p. 80. And *Stat*. 1. *Jac*. 1. *c*. 27. ſ. 2. Tit. **Pheaſant**. p.

Higler. By **Stat**. 5 *Ann*. *c*. 14. ſ. 2. 'If 'any *Higler*, Chapman, Carrier, Inn-keeper, 'Victualler or Alehouſe-keeper, ſhall have in 'his Cuſtody or Poſſeſſion, any Hare, Pheaſant, 'Partridge, Moor, Heath-Game or Grouſe, 'or ſhall buy, ſell, or offer to ſell, any Hare, '*&c*. (unleſs ſuch Game in the Hands of 'ſuch Carrier be ſent up by ſome Perſon 'qualified to kill the Game) he ſhall be carried 'before ſome Juſtice of the Peace where 'the Offence is committed, and upon View 'or Oath, being convicted of the ſame, ſhall 'forfeit for every Hare, Pheaſant, *&c*. 5*l*. 'one Half to the Informer, and the other to 'the Poor of the Pariſh where the Offence was 'committed, to be levied by Diſtreſs, by War-'rant of the Juſtice before whom convicted;

'and for Want of Diſtreſs, to be committed 'to the Houſe of Correction, for the firſt Of-'fence, for three Months without Bail; for 'every other Offence four Months.'

'And no *Certiorari* ſhall be allowed to remove 'the Conviction or other Proceedings, unleſs 'the Party convicted ſhall, before the Allowance 'thereof, become bound to the Proſecutor in '50*l.* with ſuch Sureties as the Juſtice ſhall 'think fit, to pay full Coſts within 14 Days 'after the Conviction confirmed, or *Procedendo* 'granted. And in Default thereof, the Juſtice 'ſhall proceed in Execution of the Conviction, 'in ſuch Manner as if no *Certiorari* had been 'awarded.'

'And if any Hare, Pheaſant, Partridge, 'Moor, Heath-Game, or Grouſe, ſhall be *found* 'in the Shop (*) Houſe, or Poſſeſſion of any 'Poulterer, Saleman, Fiſhmonger, Cook or 'Paſtry-Cook, or any other Perſon not quali-'fied in his own Right to kill Game, or intitled 'thereunto, under ſome Perſon ſo qualified, 'ſhall be deemed an Expoſing thereof to Sale.' 9 *Ann. c.* 25. *ſ.* 2. 28 *Geo.* 2. *c.* 12.

'Any Perſon who ſhall deſtroy, ſell or buy 'any ſuch Hare, Pheaſant, Moor, Heath-Game 'or Grouſe, and ſhall within three Months make 'Diſcovery of any *Higler*, Chapman, Carrier 'Inn or Alehouſe-keeper, or Victualler, that 'hath bought, ſold, or offered to buy or ſell, 'or had in their Poſſeſſion, any Hare, *&c.*

* This muſt be underſtood of Proof that it was found, See 6. *Mod.* 57.

ſo

'so as any one shall be convicted of such Offence, the Discoverer shall be discharged of the Pains and Penalties hereby enacted for killing or selling such Game, and shall receive the same Benefit as other Informers.' 5 *Ann. c.* 14.

'The Justices within their respective Liberties, and Lords of Manors within their respective Manors, may take away any such Hare, Pheasant, *&c.* from such *Higler*, *&c.* and Persons not qualified to kill the same, if found in their Custody.' 5 *Ann. c.* 14.

A Warrant to levy the Penalty against a *Higler* for having a Hare in his Custody. (5 *Ann. c.* 14.)

To the Constable, *&c.* and the Keeper of the House of Correction, *&c.*

Huntingdon, *to wit.* } WHEREAS T. A. *of* H. *in the said County*, Higler, *hath on the Day of the Date hereof been duly convicted before me* T. F. *Esq; one of his Majesty's Justices of the Peace for the said County, upon the Oath of* A. A. *of*, &c. *for that the said* T. A. *had, on the third Day of* August *last, in his Custody, at* H. *aforesaid, one Hare, contrary to the Statute in that Case made and provided; by Reason whereof he hath forfeited the Sum of* 5 l. These are therefore *to require you to levy the said Sum of* 5 l. *by Distress and Sale of the Goods of the said* T. A. *rendering to him the Overplus, if any such shall happen to be, the Charge of distrain-*

ing being first deducted; and you forthwith pay one Moiety thereof to the said A. A. *who first informed me of the said Offence, and the other Moiety to the Poor of the Parish of* H. *aforesaid, where the same was committed;* And *for Want of such Distress, that then you carry the said* T. A. *to the House of Correction, at,* &c. *and deliver him to the Keeper thereof, together with this Precept; who is hereby commanded to receive him into his Custody, and keep him in the House of Correction for the Space of three Months next ensuing the Date hereof, without Bail or Mainprize, this being his first Offence of this Nature:* And *hereof fail not,* &c. Given, *&c.*

The like Warrant, *mutatis mutandis,* for buying, selling or offering to Sale an Hare, *&c.*

Hind. In *Saxon* Hind, Is the Female of the *Hart,* and is called the first Year a *Calf,* the second a *Brocket's Sister,* and the third a *Hind.* The Season begins on *Holy-Rood-Day,* and lasteth till *Candlemas.*

Homine replegiando. If a Man be taken by the Officers of the Forest, then he shall have this Writ unto the Keeper [Warden] of the Forest.

The Form of the Writ.

THE King to our well beloved and faithful W. *of* B. *Warden of our Forests on this Side the* Trent, *or his Deputy in the Forest of* S. *We command you, That if* A. *and* B. *taken and detained in*

in our Foreſt of S. *for Treſpaſs of Veniſon by them committed, for which they are indicted, as it is ſaid, find you, to wit, each of them twelve honeſt and and lawful Men of your Bailiwick, who will be bound to have them before our Juſtices at the next Eyre of our Foreſt in the County of* N. *to anſwer the Treſpaſs aforeſaid; if according to the Aſſiſe of the Foreſt they are repleviſable, then in the mean Time deliver them the ſaid* A. *and* B. *to bail to the twelve Men as aforeſaid: And have you there the Names of the twelve Men, and this Writ.* Witneſs, *&c.*

If the Warden will not bail him, he ſhall have an *Alias* and *Pluries* againſt the Warden, directed unto the Sheriff, to attach him to anſwer before the King in his Bench, and ſhew wherefore he has not replevied him, *&c.* And in the ſame Writ it ſhall be contained, that he call to him the Verderors, to deliver him, who is ſo taken, in the Preſence of the Verderors by good Bail, and that the Sheriff do deliver the Names of the Bail unto the ſame Verderors, to anſwer before the Juſtices in the next Eyre. And no Man ſhall be taken or impriſoned for Vert or Veniſon, if he be not found in the Manner, or indicted; in which Caſe he ſhall be ſet to bail by the Warden *ex Officio*, or otherwiſe by Writing as aforeſaid. *Fitzherb. New Nat. Brev.* 145. *Hawk. Pleas of the Crown*, 2 *Book* 97.

Horn Geld, A Tax within the Bounds of a Foreſt, for all Manner of horned Beaſts.

Hue and Cry, *i. e.* to cry out aloud. When a Foreſter, or any other Officer of the Foreſt, ſhall find any Perſons do or intending to do any Hurt or Damage to the Foreſt, and they fly for the ſame, they are forthwith to make an *Outcry* unto the Inhabitants and next Dwellers in the Foreſt where ſuch Perſons were ſeen, requiring them in the King's Name to aid and aſſiſt them to purſue ſuch Offenders from Town to Town, and from Village to Village, Place and Place, within the Limits and Bounds of the Foreſt, until they are taken. *Manwood* 182.

This *Hue and Cry* of the Foreſt, is properly to be made by the Foreſter himſelf, becauſe he is uſually a Perſon known in that Place, and the more likely to be followed; yet any other Officer or Miniſter of the Foreſt may make it; as appears by the *Aſſizes and Ordinances of the Foreſt. Artic.* 11. 'If any ſee any Miſdoers 'within the Bounds of the Foreſt to carry 'away any Deer, he ſhall do what he may to take 'him; and if he cannot, he ſhall levy *Hue* 'and Cry, and if he do not ſo, he ſhall ſtill remain 'in the King's Mercy.' *Ibid.* 182, 409.

If after ſuch *Hue and Cry* made, any Perſon is negligent or refuſe to purſue the Offenders, then the Default of ſuch Perſon or Perſons, Townſhip or Village, ſo offending, ſhall be preſented by the Foreſter of the ſame Bailiwick at the next Court of *Swainmote*, or *Juſtice-Seat*, which ſhall firſt happen; and if after ſuch Preſentment, the Offenders ſhall be duly convicted according to the Laws of the Foreſt, they

they ſhall be fined. *Ibid.* 182, 183, 184. *Itin. Lanc. fo.* 7.

Hue and Cry is not to be made for every Treſpaſs and Offence done in the Foreſt, but only for ſuch as are done in hunting and deſtroying the wild Beaſts of the Foreſt, as appears by the above recited *Aſſiſes of the Foreſt. Artic.* 11. 'If 'any ſee any Miſdoers within the Bounds of 'the Foreſt to carry away any Deer', in ſuch Caſe he is to make *Hue and Cry*; *viz.* after thoſe who are Hunters and Takers of Veniſon and not after ſuch as commit Treſpaſs in Vert.

But ſome are of Opinion, that *Hue and Cry* is limited to be within the Bounds of the Foreſt; for by the ſame *Aſſiſes*, *Artic.* 10. 'If any Man 'take a Deer in the Foreſt, without a Warrant, 'his Body ſhall be arreſted whereſoever he be 'found within the Bounds of the Foreſt.' *Manwood* 216, 409.

If after ſuch *Hue and Cry* made, and the People come to the Place where the Offenders are, if they reſiſt and will not yield; or if they fly; and any Perſon who came in Aſſiſtance to the Foreſter, or other Officer, ſhall happen to kill one or more of them *in the Bounds of the Foreſt*, either in apprehending or taking them or any of them, he ſhall not be arraign'd for the ſame before the King and his Juſtices, or before any of the King's Bailiffs, or any other within any Franchiſe or without; neither ſhall he for ſo doing loſe either Life or Limb, or ſuffer any other Puniſhment, but ſhall enjoy the King's Peace as before. *Manwood* 183. *Hawkins's*

Pleas of the Crown, 1 *Book* 71. *Crom.* 30. *b. Dyer* 326. *pl.* 3. Vide *Table.*

Hunting, Is a Recreation and Pleaſure, which is common for any Man to uſe in his own Grounds. Sed Vide *Table.*

By **Stat.** 1 *H.* 7. *c.* 7. * 'If any ſhall *hunt* 'within the Foreſts, Parks or Warrens in the 'Night-time, or diſguiſed, one of the King's 'Counſel, or a Juſtice of Peace, to whom In-'formation thereof ſhall be made, ſhall by his 'Warrant cauſe the Offender to be brought 'before himſelf, or ſome other Counſellor or 'Juſtice of Peace, to be examined; where if he 'conceal the Fact, ſuch *Hunting* ſhall be deemed 'Felony; but being confeſſed, the Offence is 'only finable at the next General Seſſions. And 'here a Reſcous of the Execution of any ſuch 'Warrant ſhall be alſo deemed Felony.'

My Lord *Coke*, in his Comment on this Statute, ſays, That 'tis a general Law, and extends to all Perſons, of what Eſtate or Degree ſoever, and as well to Women as to Men; and that to *hunt diſguiſed in the Day-time* is equally puniſhable as *hunting in the Night*, becauſe the Offender cannot be known; but this Statute doth not extend to *Hunting in Chaſes*, nor to *Foreſts*, *Parks* or *Warrens*, *which are not really ſo*, *but only ſo reputed.* 3 Inſt. 76.

* *Note*, The *Stat.* 9 *Geo.* 2. *c.* 22. commonly called the Black Act, whilſt it continues in Force, renders this *Stat.* of 1 *H.* 7. *c.* 7. of little Uſe: But it is to be obſerved, that if ſaid *Stat.* of 9 *Geo.* 2. ſhould be ſuffered to expire, the Offence will fall back again upon the *Stat.* 1 *H.* 7. *c.* 7.

The

The ſame great Lawyer in his 4th *Inſt.* 309. ſays, That albeit *Spiritual Perſons* are prohibited by the Canon Law to *hunt*, yet by the Common Law they may *hunt* for their Recreation, in Order to make them fitter to perform their Office and Duty.

A Subject who is Owner of a Foreſt may grant Warrants to *hunt* there, but no Man can give Licence to *hunt* in the King's Foreſts, but himſelf or his Chief Juſtice in Eyre, being within his Juriſdiction, or thoſe who by ſome Grant from the King have a ſpecial Authority ſo to do. *Manwood* 189.

When a Man hath a Warrant to kill and carry away the Thing *hunted* and killed, in this Caſe he hath a Property in it, and his Warrant is called a Warrant of Profit, and he may *hunt* with what Company he will.

But where he hath no Property in the Thing *hunted* or killed, 'tis only a Licence of Pleaſure, and he cannot *hunt* with any more than himſelf. *Ibid.*

He who hath a Warrant to *hunt*, *&c.* muſt purſue his Authority very ſtrictly, for if he doth not, he is a Treſpaſſer *ab initio*, and puniſhable. *Manwood* 186.

By **Stat.** 23 *Eliz. cap.* 10. 'Hunting is pro-'hibited in ſtanding Corn.' See Tit. **Dogs.**

A Warrant or Summons on 23 *Eliz. c.* 10. for *hunting* in ſtanding Corn.

To the Conſtable, &c.

Suſſex, } *Whereas Complaint hath been this to wit.* } *Day made unto me* D. A. *Eſq;* [*one of his Majeſty's Juſtices of the Peace of the ſaid County,*] *That* R. B. *of the Pariſh of,* &c. *Gent. did, on the eighth Day of* June *laſt paſt,* hunt *with Spaniels in the Ground of* T. M. *and without his Conſent, there being then Corn ſtanding, growing and eared in the ſame Ground, by Reaſon whereof the ſaid* R. B. *hath forfeited the Sum of* 40s. *to the ſaid* R. M. *the Owner of the ſaid Ground and Corn:* Theſe are therefore *in his Majeſty's Name to command you forthwith, upon Sight hereof, to warn the ſaid* R. B. *perſonally to come before me or ſome other Juſtice of the Peace of this County, to be examined concerning the Premiſſes.* Given, &c.

If the Offender doth not appear on the Return of this Warrant, then inſtead of theſe Words, [*to be examined,* &c.] ſay.

To give Bond with Sureties for his Appearance at the next General Seſſions of the Peace to be holden for this County, to anſwer the Premiſſes; and if he ſhall refuſe ſo to do, that then you ſafely convey him to the Gaol of, &c. *and deliver him to the Keeper thereof:* Commanding *you the ſaid Keeper to receive the ſaid* R. B. *into your Cuſtody, and him*

him there ſafely to keep until he ſhall find Sureties as aforeſaid. Given, *&c.*

Note; One Juſtice hath Power to examine and to bind over to the Seſſions where this Offence is to be tried upon an Information, if the Offence be not before heard and determined by Juſtices of Aſſize, Steward of Leets, *&c.*

Law Caſes.

Treſpaſs for *entering his Cloſe, and treading down his Graſs and Corn*, and *hunting* there, the Defendant being an *inferior Tradeſman, (viz.)* a Clothier; and the Plaintiff concluded his Declaration *contra pacem, &c. & contra formam ſtatuti inde edit' & provis'*; upon Not guilty pleaded the Plaintiff had a Verdict, and it was moved in Arreſt of Judgment, that the Words *contra formam ſtatuti* go to the Whole Declaration, whereas *the Entring his Cloſe, and Treading down his Grajs and Corn*, are not contrary to any Statute, but only the *Hunting*; and when that is done by an inferior Tradeſman, the Statute 4 & 5 *Will.* increaſes the Forfeiture to 5 *l.* or to any other Sum not exceeding 20 *s.* and beſides, it gives the Party grieved an Action of Treſpaſs, in which he ſhall recover his Damages and *full Coſts*; but adjudged, that where a Statute increaſes the Penalty, or deprives a Man of that Liberty, which he had by the Common Law; if the Plaintiff will declare upon ſuch a Statute, he muſt bring his Caſe within it, and then conclude *contra formam ſtatuti*, otherwiſe his Decla-

ration will be ill; and this was *Penhallo*'s Caſe. 3 *Cro.* 231. 4 *Leon.* 49. But where there is no Statute in the Caſe, if the Plaintiff conclude *contra formam ſtatuti*, it ſhall not make his Declaration ill; for 'tis only Surpluſage, and that was *Ward*'s Caſe, 1 *Vent.* 102. 'Tis true, in the principal Caſe *Hunting* is only within the Statute; and though in a grammatical Conſtruction the Words *contra formam ſtatuti* will go to the other Treſpaſſes, which are not prohibited by any Statute; yet in a legal Conſtruction, thoſe Words ſhall be applied only to *Hunting*, which was really within the Statute: and as to the Reſt, they ſhall be rejected as Surpluſage. *Bennet* againſt *Talbot*, 1 *Salk.* 212.

Treſpaſs for breaking his (the Plaintiff's) Cloſe, and entering and *hunting* there on ſuch a Day, *continuando* the Treſpaſs as to the *Hunting* at divers Days and Times, from the Day of the Treſpaſs, *&c.* to ſuch a Day; the Defendant pleaded Not guilty, upon which they were at Iſſue, and the Plaintiff had a Verdict; it was moved in Arreſt of Judgment, that *Hunting* is a Recreation which could not be laid with a *Continuando*, becauſe both Men and Dogs muſt have ſome Reſt from that Sport; 'tis true, there are ſeveral Facts which are permanent in their Nature, and thoſe properly lie in Continuance; but there are other Treſpaſſes which terminate in themſelves, and cannot be continued, as killing a Maſtiff, *&c.* But adjudged, that *Hunting* is not an Act which terminates in itſelf, and therefore it may be laid with a *Continuando* at divers

divers Days and Times, between ſuch a Day, &c. *Monkton* againſt *Paſhley*, 2 *Salk.* 638. See the *Table.*

As Hunting *in alieno ſolo* is a Treſpaſs at Common Law and actionable, and as there is no Act which enables *any Man* (tho' qualified) to hunt, &c. in another's Ground, I would adviſe the Poſſeſſor of Lands to write out two Copies of the following Notice, and to cauſe one Copy thereof to be ſerved on the Perſon he ſuſpects will come upon his Premiſſes to kill Game, by a Perſon who can read and write, and to keep the other Copy himſelf, a Memorandum being firſt indorſed thereon, and ſubſcribed by the Perſon who ſerved the Copy in the Words following, *viz. On the Day of* 1761, *delivered to the within named* A. B. *a true Copy of the within written Notice.* Witneſs my Hand,

E. F.

The Form of a Notice to be given by the Occupier of Lands to forbid Perſons (even though qualified) to hunt, &c. upon his Premiſſes.

Mr. A. B.

TAKE *Notice, That I do hereby forbid you, at any Time or Times whatſoever after your Receipt hereof, to enter into or upon any of the Cloſes, Lands, or Premiſſes, in my Poſſeſſion, hereinafter*

after particularly mentioned, viz. one Cloſe called ——— *all which ſaid Premiſſes are ſituate and lying within the Manor of* ——, *in the Pariſh of* ——, *in the County of* ——, *or into or upon any other of the Lands and Tenements within the ſaid Manor, Pariſh, and County, now in my Poſſeſſion, and not above particularly ſet forth; or into or upon any of them, or any Part thereof, either to hunt, courſe, ſearch for or kill Game there, or on any other Account or Pretence whatſoever, ſo long as the ſame or any Part thereof ſhall remain in my Poſſeſſion: And I do hereby give you Notice, that if at any Time after your Receipt hereof, you do enter into or upon any of the ſaid Lands, Tenements, or Premiſſes above-mentioned, or any Part thereof, either to hunt, courſe, ſearch for or kill Game there, or on any other Account or Pretence whatſoever, during the Time the ſame, or any Part thereof, ſhall remain and be in my Poſſeſſion, that I ſhall conſider you as a* wilful * *Treſpaſſer, and I ſhall immediately thereupon proſecute you at Law for ſo doing.* Given *under my Hand this* —— *Day of* ——, 1761.

To Mr. *A. B.* C. D.
at ———

Inclosures in Foreſts. If a Chief Juſtice in *Eyre* will grant a Licence to a Man to *incloſe* his Ground in the Foreſt, paying a certain Rent, and ſuch Licence is made *ſedente curiâ*,

* This may induce the Jury (in an Action of Treſpaſs) to give ſuch Damages as will intitle the Plaintiff to his full Coſts.

ſitting

ſitting the Court, it is good for ever, but not otherwiſe; for if it is not granted in Court, it may be pulled down again. *W. Jones Rep.* 277. But ſuch *Incloſure* muſt be with low Hedges, which may not diſturb the Game. *Manwood* 199.

Arable Land may be *incloſed*, but not with high Hedges, though Woods and Coverts in the Foreſt may be *incloſed* with high Hedges and Ditches, to preſerve them from Hurt and Cropping by Cattle, until they are paſt all Danger. *Manwood* 200.

Upon a Preſentment againſt *John Taylor* for *Inloſing* a common Lane, he was fined 10*s.* and to lay out the Lane: Mr. Attorney ſaid, the Way for the King's *Hunting* ought to be as free as the Highway for Men's travelling. *W. Jones* 269.

Infant. If an *Infant* is impleaded before the Chief Juſtice in *Eyre* for a Treſpaſs done in a Foreſt, he may appear in proper Perſon, and ſhew that he is under Age, and pray the Chief Juſtice that *J. P.* may be aſſigned for his Guardian; or if he doth not appear in Perſon, but the ſaid *J. P.* for him, and ſheweth he is an *Infant*, and prayeth he may be admitted his Guardian, the Court will admit him accordingly. *Manwood* 17.

If an *Infant* hath choſen his Guardian who is afterwards ſick, or will not appear before the *Juſtice-Seat*; yet if the *Infant* appears and prayeth *J. S.* may be admitted for him as *Prochein Amy*, he will alſo be admitted according to that Prayer. *Ibid.*

Judgment. If the Juſtice in *Eyre* give erroneous *Judgment*, the Party grieved may have a Writ of Error out of Chancery returnable in the King's Bench, and there Juſtice ſhall be done. 4 *Inſt.* 297.

Jury. By **Stat.** 7 *Ric.* 2. *c.* 3. 'No Manner of *Jury* ſhall be from henceforth compelled by any Officer of the Foreſt, or other Perſon whatſoever to travel from Place to Place out of the Places where their Charge was given to them againſt their Gree, nor by Malice, or by Menace, nor other Dureſs, conſtrained to give their Verdict of a Treſpaſs done in the Foreſt, otherwiſe than their Conſcience will clearly inform them; but they ſhall give their Verdicts upon their Charge, in the Place where the Charge is given.' *N. B.* This Act extendeth to Foreſts only. 4 *Inſt.* 314. Vide *Table.*

Juſtice-Seat, or *the Eyre of the Foreſt*, is a *Court of Record*, and though the Treſpaſſes of Offenders are preſented at the Court of Attachments, and afterwards thoſe Offenders are upon ſuch Preſentments indicted at the Court of Swainmote, according to the Statute 1 *Ed.* 3. *c.* 8. and the Statute *de Ordinatione Foreſtæ*, yet thoſe Courts cannot give Judgment, or aſſeſs any Fine, for that muſt be done at the *Juſtice-Seat*, and therefore the Rolls of ſuch Offences, in both thoſe Courts, are to be ſealed with the Seals of the Verderors, who are to keep them until the *Juſtice-Seat*, and then they are to preſent them to the Chief Juſtice in Eyre.

This

This Court may be proclaimed to be held within the Foreſt on ſuch a Day; and at leaſt forty Days before the Sitting thereof, 'tis uſual to ſend out two Writs of Summons, one directed to the Sheriff of the County, and the other directed *Cuſtodi foreſtæ Domini Regis, &c. vel ejus locum tenenti in eadem, &c.* which laſt Writ conſiſts of two Parts; firſt to ſummon all the Officers of the Foreſt, and that they bring with them all the Records, *&c.* and ſecondly, all Perſons who claim any Liberties or Franchiſes within the Foreſt, and to ſhew by what Authority they claim the ſame. 4 *Inſt.* 291.

After forty Days Notice given by the Sheriff by Proclamation, of holding the Court of *Juſtice-Seat*, and after the Chief Juſtice in *Eyre*, and thoſe in Commiſſion with him, are come to the Place appointed, then the firſt Commiſſion muſt be read, and the Officers called, and the Freholders and all other Perſons who were ſummoned to appear; then there muſt be a ſubſtantial Jury of twenty-four, twenty or eighteen, choſen out of thoſe Freeholders and others there preſent, who muſt be ſworn truly to inquire and true Preſentment make of all ſuch Matters and Things as ſhall be given them in Charge. *Manwood* 65.

For the Charge, ſee *Manwood* 65.

After the Court is ſat, the Chief Juſtice may adjourn it to any Place within the County, and he may likewiſe take Recognizances any where; and a Preſentment or an Indictment found by the Jury (but not in the Swainmote) may

may be traverſed, becauſe only *found by one Jury.*

The Proceedings are *de hora in horam*, and the Defendant muſt plead preſently. *Wood's Inſt.* 497.

Note: If a *Juſtice-Seat* be diſcontinued by the not Coming of the Chief Juſtice, it may be revived by the King's Writ. *Manwood* 78.

Keeper *of the Foreſt*, * Is an Officer who has the principal Government of all Things belonging to the Foreſt, and the Check of all the other Officers, called alſo the Chief Warden of the Foreſt; when the Chief Juſtice in *Eyre* of the Foreſt thinks fit to hold his Juſtice-Seat, he ſends out his general Summons to the *Keeper* forty Days before, to warn the Officers, *&c.* to appear. See **Warden.**

Kipper time, A Space of Time between the Feſtival of the Invention of the Holy Croſs, *May* 3. and *Twelfth-Day*; during which Salmon-fiſhing in the River *Thames* from *Graveſend* to *Henley* was forbidden by *Rot. Parl.* 50 *Ed.* 3.

King. The King having a continual Care for the Preſervation of the Realm, and for the Peace and Quiet of his Subjects, he had therefore, amongſt many Privileges, this Prerogative, *viz.* To have his Place of Recreation whereſoever he would appoint. *Manwood* 148,

* Account lieth againſt him for the Deer, for he hath Poſſeſſion as a Bailiff. 10 *H.* 7. *fo.* 30. *Kitchin* 119.

203. But see **Hampton Court Chase**, whereby it appears that the *King* cannot erect either Forest or Chase over other Mens Grounds, without Consent. The *King* may grant a Forest to a Subject. *Manwood* 155, 156. See the *Table.*

Lawn, A great Plain in a Park, or between two Woods.

Laws *of the Forest.* The *Laws of the Forest* are *general*, because they respect all Forests alike, and they are likewise *particular*, because they relate to Forests and to no other Places. *Manwood* 205.

Before the making of *Charta de Foresta* there was no certain *Law* to punish Offences committed in Forests; for at first the King caused such Offenders to be punished in such Manner as he thought fit, till King *Canutus*, and other Kings, made Canons and Constitutions to preserve the *Vert* and *Venison*. These Constitutions afterwards, by Continuance of Time, were taken for *Laws*. *Ibid.* 206.

Leap, An Engine, made of Twigs, to catch Fish in.

Libera Chasea habenda, Is a judicial Writ granted to a Person for a *Free Chase* belonging to his Manor; after Proof made by Inquiry of a Jury, that the same of Right belongs to him. *Jac. Law-Dict*, sub Tit.

Ling. See **Game.**

Bail a Custody, and Mainprise only Security.

Mainprise, Signifies the Taking a Man into friendly Custody; and *Manwood* makes this Difference

Difference between *Mainprise* and *Bail*: He that is *mainprised*, is said to be at large, after the Day he is let to *Mainprise* until the Day of his Appearance, and under no Possibility of being confined by his *Mainpernors*; but where a Man is let to *bail*, he is always accounted by Law to be in their Ward for the Time; and they may, if they will, keep him in Prison all that Time; so that *Mainprise* is more large than *Bail*, for every *Bail* is *Mainprise*, but every *Mainprise* is not *Bail*. *Wood's Inst.* 582. *Manwood* 32, 33.

Manner. A Forester or other Officer must not arrest or imprison the Body of any Offender without due Indictment, except he take him *with the Manner*, that is, for Venison, either *Dog-draw*, *Stable-stand*, *Back-bare* or *Bloody-hand*; and for Vert, cutting it and carrying it away; nor shall constrain any to make Obligation of Ransom against his Will, and the Assize of the Forest, in Pain to pay the Party grieved double Damages, and Fine and Ransom to the King. 1 *Ed.* 3. *c.* 8. 7 *R.* 2. *c.* 4.

If any Forester or Keeper shall take any one *in the Manner*, then he may carry him to Prison, from whence he shall not be delivered, without a special Warrant from the King or the Chief Justice in *Eyre* of the Forest. *Manwood* 192.

The Punishment for being taken *in the Manner* is, by a judicial Sentence at the *Justice-Seat*, to be fined at the Discretion of the Lord Chief Justice, committed till he pays the Fine, and then and there to be bound to his good Behaviour

viour in the Foreſt for ever afterwards. *Ibid.* 193.

Dog-Draw, Is where a Man hath wounded a wild Beaſt, and is found with a Hound or other *Dog* drawing after him to recover the Beaſt ſo wounded.

Stable-Stand, Is where one is found at his *ſtanding* ready to ſhoot any Deer, or *ſtanding* cloſe by a Tree with Grey-hounds in his Leaſh, ready to let ſlip.

Back-Bare, Is where a Man hath killed a wild Beaſt in the Foreſt, and is found carrying him away.

Bloody-Hand, Is where one is found in a Foreſt in a ſuſpicious *Manner*, and is Bloody. *Manwood* 193.

Mares. By **Stat.** 27 *Hen.* 8. *c.* 6. 'Every 'one, having Inheritance or Frehold in a Park 'kept for Deer which is a Mile about, or his 'Farmer, ſhall keep two *Mares* apt and able to 'bear Foals, each of them being thirteen Hands 'high from the loweſt Part of the Hoof to the 'higheſt Part of the Shoulder, and each con-'taining four Inches, in Pain of 40 *s.* for every 'Month they want them: And if the Park be 'four Miles about they ſhall keep four ſuch '*Mares*, upon the like Pain.'

'If any of the *Mares* die, they have three 'Months given them to provide another, with-'out Danger of incurring the ſaid Penalty.'

'They ſhall not ſuffer their *Mares* to be 'leapt by any Stone-Horſe under fourteen 'Hands high, in Pain of 40 *s.*'

'The

'The said Forfeitures are to be divided betwixt the King and the Prosecutor.'

'This Act shall not extend to *Westmorland*, *Cumberland*, *Northumberland*, nor Bishoprick of *Durham*, nor to the Parks wherein the Inhabitants of the Town next adjoining have Common.'

'Spiritual Persons may sell the Increase and Breed of their *Mares*, notwithstanding this Act.'

And by 32 *H.* 8. *c.* 13. (in order to preserve the Breeding of strong Horses) no Stone-Horse above two Years old, and under fifteen Hands (every Hand four Inches) to be put into Forests where *Mares* are kept, upon Pain of forfeiting the Horse.

Marten, A Kind of wild Cat, and is a Beast of Chase. *Manwood* 50.

Mast, In *Sax.* mæſt, is the Fruit of Wild-Trees; as Oak, Beech, *&c.*

Mast-time, Is the Season when *Mast* is ripe.

Mill. A Man may not build a *New Mill* in the Forest without Leave. *Manwood* 297.

Mower. By *the Assises and Customs of the Forests*, 'No *Mower* shall bring with him a great Mastiff to drive away the Deer of our Lord the King, but little Dogs to look to Things without the Coverts.'

Murder. The Lord *Dacres*, and *Mansell* and others in his Company, came unlawfully to hunt in a Forest, and being resisted, one of the Company, when the Lord *Dacres* was a great Way off, and not present, killed a Man; and it

was

was adjudged *Murder* in him and all the Reſt. *Keil. Rep.* 87. *Moor* 86.

Malefactor. See **Receiver.**

Nets. By **Stat.** 1 *Jac.* 1. *c.* 27. 'Every 'Perſon (not qualified) convicted by his own 'Confeſſion, or Oath of two Witneſſes before 'two Juſtices, to keep a *Net* to kill Deer, 'Hare, Pheaſant or Partridge, ſhall be committed for a Month without Bail, unleſs he 'immediately pay, to the Uſe of the Poor, 'where the Offence was committed, or where 'he was apprehended, 40 *s.* for every *Net.*'

By **Stat.** 7 *Jac.* 1. *c.* 11. 'Every Conſtable or Headborough, upon a Warrant under 'the Hands of two Juſtices, may ſearch the 'Houſes of Perſons ſuſpected to have any Setting Dogs or *Nets*, for taking Pheaſants or 'Partridges, and may kill and cut in Pieces 'at Pleaſure the Dogs and *Nets* there found, as 'Things forfeited to the ſaid Officers.'

By **Stat.** 4 & 5 *W.* & *M.* *c.* 23. 'No 'Perſon ſhall keep a *Net*, Angle, Leap, Piches, 'for taking Fiſh, other than the Maker or 'Seller thereof, or Owner or Occupier of any 'River or Fiſhery; and that ſuch Owner, *&c.* 'and ſuch whom he ſhall authoriſe, may ſeize 'and keep ſuch *Net*, *&c.* to their own Uſe, 'which ſhall be uſed or found in the Poſſeſſion 'of any Perſon whatſoever, fiſhing in any 'River or Fiſhery without the Conſent of the 'Owner or Occupier; and any Perſon, by a 'Warrant from one Juſtice, may ſearch the 'Houſes and other Places of Perſons prohi-

'bited,

'bited, and ſuſpected to have in their Cuſtody 'any *Nets*, or other ſuch Engines, and either 'to deſtroy them, or ſeize and keep them to his 'own Uſe.'

By **Stat.** 4 & 5 *Ann. c.* 21. 'No Perſon 'whatſoever ſhall keep any *Net*, Angle, &c. 'other than ſuch as are allowed ſo to do by 4 '& 5 *W. & M. c.* 23.'

A Warrant to ſearch for *Nets* and Setting Dogs. [7 *Jac.* 1. *cap.* 11.]

To the Conſtable of, &c.

Surry, } By *Virtue of an Act of Parliament*
to wit, } *made in the ſeventh Year of the Reign of King* James *the Firſt: Theſe are (in his Majeſty's Name) to authoriſe and command you to enter into and ſearch the Houſe or Houſes of any Perſon or Perſons (not being qualified within your Precincts, ſuſpected to have Setting Dogs or Nets, (for the taking of Pheaſants and Partridges) and that whereſoever you find any ſuch Setting Dogs or Nets, the ſame you take, carry away and detain, kill, deſtroy and cut in Pieces, as Things prohibited by the Act aforeſaid, and forfeited to you, and ſhall find out and take the ſame as aforeſaid: Hereof fail not at your Peril.* Given, &c.

A Warrant

A Warrant againſt one keeping fiſhing *Nets*, and to ſearch for them. [4 & 5 *W. & M. cap.* 23.]

To the Conſtable, *&c.*

Norfolk, } WHereas *Complaint hath been made unto me, that the Fiſh in*, &c. *hath lately been deſtroyed by ſome idle, diſorderly Perſons, not qualified by Law, either as having a free Fiſhery, or being Owners thereof, or otherwiſe lawfully authorized to fiſh in navigable Rivers; and that ſeveral* Nets, *Leaps, Piches, and other Inſtruments and Engines are kept in the Pariſh of*, &c. *for the Deſtruction of Fiſh by Perſons who are not Makers or Sellers thereof, contrary to the Statute in that Caſe made and provided:* Theſe are therefore *to require you forthwith to enter into and ſearch the Houſes, Out-houſes, and other ſuſpected Places of Perſons within your Pariſh, or of ſuch who you are informed have any* Nets *or other Inſtruments for Deſtruction of Fiſh, and to ſeize the ſame where you ſhall find any ſuch, and likewiſe to bring the Perſon, in whoſe Houſe it ſhall be found, before me or ſome other Juſtice of the Peace for this County, to anſwer the Premiſſes.* And hereof fail not, *&c.*

Law Caſes.

An Information was brought againſt the Defendant upon the *Stat.* 2 *H.* 6. *c.* 15. for faſten-

ing *Nets* upon the River *Thames* to Boats *Day and Night, ſo long as the Tide did ſerve*, and did not ſet forth, that it was continually *Day and Night*; but adjudged, that the Word *continually* in this *Statute* ſhall be taken to mean ſo long as the *Nets* faſtened may take Fiſh; and ſo long as the Time of fiſhing continueth. 12 *Rep.* 89.

Treſpaſs was brought againſt the Defendant for cutting the Plaintiff's *Nets* and Oars; who pleaded, that he was ſeiſed of a ſeveral *Fiſhery* in, *&c.* and that the Plaintiff with others endeavoured to row on the Water, and to catch Fiſh there with their *Nets*; and thereupon to preſerve his (the Defendant's) Fiſhing, he cut the *Nets*, *&c.* and upon a Demurrer to this Plea, the Plaintiff had Judgment; for the Defendant might have ſeized the *Nets* Damage-feaſant, and detained them, but cannot juſtify the Cutting them; which he may now do by Virtue of an Act of Parliament. *Reynell* againſt *Champernoon*, *Cro. Car.* 228.

The Defendant was indicted for fiſhing with a *Net* not exceeding two Inches and an Half in the Meſh; but this Indictment was quaſhed, becauſe it ſhould have been exceeding two Inches and an Half. *The King* againſt *Hawkins*, 2 *Keb.* 635.

In *Warren*'s Caſe it was adjudged, that every Subject hath a Right or Liberty to fiſh with lawful *Nets* in any navigable River; and the King cannot deprive him of that Liberty, for he hath only a Right to Royal Fiſh. *Warren* againſt *Matthews*, *Modern Caſes* 75.

Night. See **Forest.**

Non-user. In all Cases where Liberty is granted of any Thing in a Forest, if the Grantee doth not use the same continually, and it appeareth so upon Inquiry, then the Liberty is to be seized, for *Non-user* is a good Cause of Seizure; as appears in the Case of the Abbot of *Rivall. Itin. Pickering fo.* 15, 17, 18. *Manwood* 93. But the *Non-user* of Parks or Warrens, is neither a Cause of Seizure or Forfeiture. *Manwood* 236, see 208.

Nusance *of the Forest.* Whatsoever tends to the Hurt or Destruction of the Forest, or of the *Vert* or *Venison*, or which tends to the Breach of those Laws made for the Preservation of them, the same is a *Nusance* of the Forest, and may be comprehended under these three Heads. 1. *Common Nusance*, 2. *Special Nusance*, 3. *General Nusance.*

Of the *Common Nusance*; this Sort of *Nusance* is a general Hurt, as well to the Inhabitants, as to the Beasts of the Forest; as suffering a Bridge to go to decay, so that People are forced to go through the Forest, both to the Trouble of themselves, and the Disquiet of the Deer; the erecting a Mill; stopping a Water-course, &c. *Manwood* 207, 208.

Of the *Special Nusance*; this tends chiefly to the Hurt of the wild Beasts of the Forest, and comprehends all Manner of Hunters and Trespassers, which in any ways offend against the *Venison* or the Wild Beasts, as by Hunting or in any other Manner, to take and destroy them, or intending so to do. *Ibid.* 208.

Of the *General Nuſance*; this Kind tends to the Hurt of the whole Foreſt, and as it may happen to the wild Beaſts, it comprehends all Manner of Treſpaſſes, which tend to the Waſte, Hurt or Deſtruction of the *Vert*; the Conſequence whereof is the Driving the Deer out of the Foreſt to other Coverts, which is a Hurt to them; for whatſoever tends to the Hurt of the *Vert* and *Veniſon*, tendeth to the general Hurt of the Foreſt itſelf. And this *Nuſance* comprehends likewiſe all Surcharges of the Commons, Aſſarts, Purpreſtures, *&c. Ibid.* 208.

The Regarders of the Foreſt are to inquire into all the *Nuſances*, and to make their Preſentments and Certificates to the Verderors at the next *Swainmote* to be holden for the Foreſt, that the Offenders may be tried according to the Ordinances of the Foreſt: After ſuch Offences are tried, the Proceedings are to be ſealed up and kept by the Verderors, until the Coming of the Chief Juſtice in *Eyre*, and then cannot be traverſed: At the Coming of the Chief Juſtice, all ſuch who are convicted of any *Common Nuſance* in the Foreſt, are to be committed, fined and bound to amend it by a certain Day. Such as are convicted of a *Special Nuſance* are to be committed, ranſomed, and bound to the good Behaviour of the Foreſt; and ſuch as are convicted of a *General Nuſance* are to be committed, fined, and bound to the Good Behaviour of the Foreſt. *Manwood* 209, 210, 211.

Officer. By **Stat.** 12 *Geo.* 1. *c.* 3. 'If 'any Officer or Soldier ſhall, without Leave of 'the Lord of the Manor under his Hand and

'Seal,

'Seal, take, kill or deſtroy any Hare, Coney, 'Pheaſant, Partridge, Pigeon, or other Sort of 'Fowls, Poultry or Fiſh, or his Majeſty's 'Game, and be convicted thereof, on the Oath 'of one or more Witneſſes, before one Juſtice 'of Peace; every *Officer* ſhall for every ſuch 'Offence forfeit 5*l.* to the Poor of the Place 'where, *&c.* and every Commander in Chief, 'for every ſuch Offence committed by a Soldier 'under his Command, ſhall forfeit 20*s.* to be 'diſtributed in like Manner; and if on ſuch 'Conviction, and Demand made by the Con-'ſtable or Overſeers of the Poor, ſuch *Officer* 'ſhall not in two Days pay the ſaid reſpective 'Penalties, he ſhall forfeit his Commiſſion, 'which is hereby declared void.'

Note; This is for the better Preſervation of the Game in or near ſuch Place where *Officers* or Soldiers are quartered.

Outlawry. Offenders in Foreſts may be proſecuted by Way of *Outlawry*, *viz.* If a Man be indicted for any Offence done there, who lives in another County, and out of the Foreſt, ſo that he cannot be taken by the Foreſters; in ſuch Caſe the Offender may be *outlawed*, and the Proceedings againſt him are the ſame as at Common Law; and by Virtue of that *Outlawry* his Goods and Chattels are forfeited to the King, and ſo the Profits of his Lands found on Inquiſition. *Manwood* 223, 224. See the *Table*.

If a Man is *outlawed* for an Offence either in the *Vert* or *Veniſon*, and afterward taken by a *Capias Utlagatum*, he ſhall be committed without Bail, to remain in Priſon until delivered

by a ſpecial Warrant from the King, or from the Chief Juſtice in *Eyre*, or Chief Warden of the Foreſt. *Ibid* 224.

Pannage. See *Table.*

Park, (From *Parquer* to incloſe, and in *Saxon* Deopyalo, Is a great Quantity of Ground incloſed and privileged for wild Beaſts of Chaſe, by the King's Grant or by Preſcription, and it is not * lawful for any Man to erect a *Park*, Chaſe or Warren, without a Licence under the Great Seal; for the Common Law gave no Encouragement to Matters of Pleaſure (wherein moſt Men do exceed) becauſe they brought not Profit to the Common-wealth. † The Beaſts of the *Park* properly extend to the Buck, Doe, Fox, Martern and Roe, ‡ but in a common and legal Senſe, to all Beaſts of the Foreſt. ‖ A *Park* muſt be incloſed, for if it lies open, it is a good Cauſe of Seizure into the King's Hands as a Thing forfeited; and the Owner cannot have an Action againſt thoſe that hunt in his *Park*, if it lies open.

To a *lawful Park* three Things are required. 1. A Liberty, either by Grant or Preſcription; 2. Incloſure, by Pale, Wall or Hedge; and 3. Beaſts of a *Park*. 2 *Inſt.* 199.

There are *Parks* in Uſe and Reputation erected without lawful Warrant, and ſuch nominal *Parks*, having been uſed as *Parks* for a long

* 2 *Inſt.* 199. † 1 *Inſt.* 233. *a.* ‡ Neither *Martern* nor *Roe* now in England, *Manw.* 50. ‖ *Wood's Inſt.* 207.

Time,

Time, the Law doth * allow that the Owner may have an Action for killing his Deer therein; but whether they are *Parks* or not, in the Eye of the Law, yet they are Grounds incloſed, where Deer are uſually kept; and therefore Offenders therein are puniſhable by the *Stat.* 3 & 4 *W. & M. c.* 10. and others. See, **Deer.**

Parks as well as Chaſes are ſubject to the Common Law; and are not to be guided by the Foreſt Laws. 4 *Inſt.* 314.

A Man may have a *Park* in the Foreſt by Grant or Preſcription; but then it muſt be ſo incloſed, that the Beaſts of the Foreſt cannot enter; for if there is any Deer-leap, or it is not kept incloſed, 'tis a Forfeiture thereof. *Manwood* 210, 226.

Parks being laid open to Foreſts for forty Years may yet be incloſed again; and they may kill any Deer which come into thoſe *Parks*: So though Incloſures have been continued forty Years, if they were not before, they may be deſtroyed and laid open. 2 *Rep.* 155. *Manwood* 200.

By **Stat.** *Weſtm.* 1. *c.* 20. 'Treſpaſſers in 'Parks or Ponds ſhall give treble Damages to 'the Party grieved, ſuffer three Years Impriſon-'ment, be fined at the King's Pleaſure, and give 'Surety never to offend in the like Kind again; 'and if they cannot find Surety, they ſhall ab-'jure the Realm, or being Fugitive ſhall be 'outlawed.'

* *Wood's Inſt.* 207.

By **Stat.** 3 & 4 *W. & M. c.* 10. 'If any 'Perſon ſhall in the Night-time pull down or 'deſtroy, or cauſe to be pulled down or de-'ſtroyed, the Pales or Walls of any *Park*, Foreſt, 'Chaſe, Purlieu, Paddock, Wood, or other 'Ground incloſed, where red or fallow Deer 'are kept, and thereof convicted by the Oath 'of one Witneſs, before a Juſtice of Peace, 'he ſhall by ſuch Juſtice's Warrant ſuffer Im-'priſonment for three Months without Bail or 'Mainpriſe.'

By **Stat.** 5 *Geo.* 1. *c.* 15. *ſ.* 6. 'Perſons 'convicted by Confeſſion, or Oath of one Wit-'neſs, before a Juſtice of Peace, of pulling 'down or deſtroying the Pales or Walls of 'any Parks, Foreſt, *&c.* where any Red or 'Fallow Deer ſhall be then kept, without the 'Conſent of the Owner or Perſon chiefly in-'truſted with the Cuſtody thereof; ſhall be 'ſubject to the Penalties inflicted by 3 & 4 'W. & M. c. 10. for killing a Deer.' See 'Deer, and *Table.*

A Grant of a *Park* and Free Warren.

GEORGE the Second, *by the Grace of God, of* Great Britain, France, *and* Ireland, *King, Defender of the Faith,* &c. **To all** *to whom theſe preſent Letters Patent ſhall come, Greeting:* **Know ye,** *that we of our ſpecial Grace, and of our certain Knowledge and meer Motion,* **have** *given and granted,* **and** *by theſe Preſents do give and grant, for us, our Heirs and Succeſſors, unto our well beloved Subject* R. C. *of,* &c. *the*

Liberty

Liberty of one Park for wild Beaſts, and alſo Free Warren in all his Demeſne Lands of and within his Manor or Lordſhip of U. *with all Liberties which to ſuch* Park *or Warren do belong or appertain:* **To have,** *hold, enjoy and exerciſe the ſaid Liberty of* Park *and Warren to the ſaid* R. C. *his Heirs and Aſſigns in all his Demeſne Lands aforeſaid.* **Provided** *that the ſame Lands be not within the Bounds of our Foreſt of,* &c. *ſo that no Man can enter into the ſaid Lands to hunt, or to take any Thing in them, which to a* Park *or Warren belongeth, without the Licence and good Will of the ſaid* R. C. *and his Heirs, under the Pain of forfeiting to us ten Pounds. Though or for that there is no expreſs Mention of the true yearly Value, or any Certainty of the Premiſſes, or any of them, or of any Grant or Grants heretofore to the ſaid* R. C. *by us, or by any of our Progenitors appeareth to be made, or any Statute, Act, Ordinance, or Proviſion to the contrary publiſhed, made, provided, or any other Cauſe or Matter to the contrary notwithſtanding.* **In Witneſs** *whereof we have cauſed theſe our Letters to be made Patent.* **Witneſs** *ourſelf at* Weſtminſter *the fourth Day of* May, *in the ſixth Year of our Reign.*

A Mittimus for the pulling down and the deſtroying Pales of a *Park*, in the Night-time; according to 3 & 4 *W.* & *M.* *c.* 10.

To the Conſtable of, &c. and to the Keeper of the Common Gaol, &c.

Bedford, } WHereas *Complaint hath been*
to wit. } *made unto me, that* W. K. *of your Pariſh, of,* &c. *did, on the third Day of* June *laſt paſt in the Night-time of the ſaid Day, pull down and deſtroy ſeveral Pales of the* Park *of Sir* R. F. *Bart. in the County aforeſaid, contrary to the Statute in that Caſe made and provided: And* whereas *the ſaid* W. K. *hath been duly convicted before me this preſent Day, upon Oath, of the ſaid Offence:* Theſe are therefore *to charge and command you to apprehend the ſaid* W. K. *and convey him to the Gaol aforeſaid, and to deliver him to the Keeper thereof, together with this Warrant:* Commanding *you the ſaid Keeper to take him into your Cuſtody, and him ſafely to keep in the ſaid Gaol for the Space of three Months without Bail.* Given, &c.

A Warrant

A Warrant to levy 30 *l.* for pulling down the Pales of a *Park*, according to 5 *Geo.* 1. *c.* 15.

To the Conſtable, &c.

Bedford, } WHereas N. B. *of*, &c. *hath to wit,* } *this preſent Day been duly convicted before me, that he, on the ſixth Day of* Auguſt *laſt paſt, did pull down* [or cauſe to be pulled down,] *three Pales of the Park of* H. M. *of*, &c. *in which* Park *red and fallow Deer are uſually kept; and that the ſaid* N. B. *committed the ſaid Offence, contrary to the Statute in that Caſe made and provided, and without the Conſent of the Owner, or the Perſon chiefly intruſted with the Cuſtody of the ſaid* Park, *by Reaſon whereof he hath forfeited* * 30 l. Theſe are therefore *to require you forthwith to levy the ſaid* 30 l. *ſo forfeited, as aforeſaid, by Diſtreſs and Sale of the Goods and Chattels of the ſaid* N. B. *and that you pay and diſpoſe one third Part thereof to* H. J. *who firſt informed of the ſaid Offence; and that you diſtribute another third Part thereof to and amongſt the Poor of the Pariſh of* H. *where the Offence was committed; and that you pay the other third Part to the aforeſaid* H. M. *being Owner of the ſaid* Park; *and if it ſhall happen that the ſaid* N. B. *ſhall not have any Goods or Chattels within your Pariſh, ſufficient to ſatisfy the ſaid Forfeiture of* 30 l. *that then you certify me*

* The Penalty, inflicted by 3 & 4 *W.* & *M. c.* 10. for killing a Deer.

thereof, that ſuch further Order may be taken therein as is purſuant to the ſaid Statute. And hereof *fail not*, &c.

Commitment for Want of Diſtreſs. [5 *Geo.* 1. *c.* 15.]

To the Conſtable, *&c.* and to the Keeper of the Gaol of, *&c.*

Bedford, *to wit.* } WHereas *you the ſaid Conſtable of*, &c. *was lately required by Warrant under my Hand and Seal to levy the Sum of* 30 l. *by Diſtreſs and Sale of the Goods of* N. B. *of*, &c. *by him forfeited, for an Offence which he committed againſt the Form of the Statute*, &c. *made, intituled*, An Act, *&c.* And whereas *I have been certified by you, That you cannot find a ſufficient Diſtreſs to be taken of the Goods and Chattels of the ſaid* N. B. *for the Offence aforeſaid*: Theſe are therefore, *in his Majeſty's Name, to require you to apprehend the ſaid* N. B. *and to convey him ſafely to the Gaol of the ſaid County, and deliver him to the Keeper thereof, together with this my Warrant for your ſo doing*: Requiring *alſo you the ſaid Keeper to take into your Cuſtody the ſaid* N. B. *and him ſafely to keep for the Space of one whole Year next enſuing, and that then you deliver him to the Chief Officer of*, &c. *being the Town next adjoining to the Place where the Offence was committed, or ſome of the Under Officers, together with this Precept, who are required to ſet the ſaid* N. B. *in the Pillory, in the ſaid Town on ſome Market-*

Day for the Space of one Hour: And hereof *fail not, as you will ſeverally anſwer the contrary at your reſpective Perils.* Given *under my Hand and Seal*, &c.

Law Caſes.

When the Owner of a *Park* dies, his Heir at Law ſhall have the Deer, becauſe without them the *Park* which is his Inheritance, is no *Park*. 7 *Rep.* 17.

In Treſpaſs for entring into a *Park*, Warren, *&c.* it is no Plea to ſay it is no *Park* or Warren, but he muſt plead *Not guilty*, and give the ſpecial Matter in Evidence. 10 *H.* 6. 16. 19 *H.* 8. 9. And therefore it is held clearly, that if one has a Warren, if he incloſe or impark without the King's Licence, and another hunts there, and he bring Treſpaſs *de Parco fracto*, the other may Plead *Not guilty*, and give this Matter in Evidence. Sir *Matthew Hale's* Notes on *Fitzherb.* 197.

One *Roger Wormale*, and *Rowland Triſtram* and *Thomas Banks*, two of his Companions, entered *Hyde-Park* with Arms to kill and ſteal the Deer in the *Night-Time*; but being oppoſed by the Keeper and his Servants they ran away; but being purſued, one of them was wounded by a Shot, whereupon they all came back, and *Wormale* killed one of the Keeper's Servants; for which they being apprehended were all found guilty of Murder; becauſe they all came into the *Park* to do a premeditated and an unlawful Act, and the Event ſhewed their Malice

Malice extended to kill any Perſon that ſhould oppoſe them, they being all armed for that Purpoſe. *Palm.* 35. 2 *Roll. Rep.* 120.

Anno 15 *Ed.* 3. The Earl of *Lancaſter*, who was Lord of a Foreſt, granted to *John Harrington* that he might make a *Park* there; it was adjudged, that if the Grantee incloſe it ſo ſlightly that the Beaſts of the Foreſt might get in, this was a Forfeiture, and the Lord might enter ſuch *Park*, and take the Deer, *The King* againſt Sir *John Byron*, *Bridgm.* 26.

See **Diſpark** and *Table.*

Park-bote, Signifies to be quit of incloſing a Park, or any Part thereof. 4 *Inſt.* 308.

Parker, Is one that hath the Cuſtody or Keeping of a Park.

A Grant of the Office of *Parkerſhip* of a Park.

KNow all Men, &c. *That I* B. M. *Eſq; Lord of the Manor of* M. *have given and granted,* **and** *by theſe Preſents do give and grant to my faithful Servant* J. J. *the Cuſtody or Office of Keeper of my Park of* M. *in the County of* G. **To have and to hold,** *occupy and enjoy, the ſaid Cuſtody or Office of Keeper of my ſaid Park by himſelf or Deputy) for whom he ſhall be anſwerable to me,) for and during the natural Life of the ſaid* J. J. *with the Wages of one Shilling and Fourpence for every Day yearly, during his Life, to be paid to him by the Receiver, Bailiff or Farmer of the ſaid Manor of* M. *out of the Rents and Profits*

of

of the said Manor, at the Feasts of, &c. *by even and equal Portions;* **And** *also one Suit of Livery, such as my* Parkers *are wont to have, at the Feast of,* &c. **And I do hereby** *will and command the Receivers, Bailiffs and Farmers of my said Manor of* M. *both now and hereafter to be, that he or they, out of the Rents and Profits of my said Manor of* M. *do pay or cause to be paid unto the said* J. J. *or his Assigns, the aforesaid Wages of one Shilling and Four-pence for every Day at the Feasts aforesaid, by equal Portions, from Year to Year, during the Life of the said* J. J. **Know ye also,** *that I have moreover given and granted, and by these Presents do give and grant unto the said* J. J. *Pasture for two Horses, and six Kine, within the Park aforesaid, during his Life as aforesaid, to be depastured, together with free Egress and Regress in and out of the said Park, without any Contradiction whatsoever.* **In Witness,** &c.

Law Cases.

If a Man grant by his Deed to another the Office of *Parkership* of a Park, to have and occupy the same Office for Term of his Life, the Estate which he hath in the Office, is upon Condition in Law, to wit, that the *Parker* shall well and lawfully keep the Park, and shall do that which to such Office belongeth to do, or otherwise it shall be lawful to the Grantor and his Heirs to oust him, and grant it to another if he will; but this Condition must be understood with a Distinction; for if the *Parker* doth not attend on the Park one or two Days,

this

this is no Forfeiture of the Office of *Parkerſhip*; but if in his Default any Deer be killed, and ſo a Damage to the Lord; that is a Forfeiture. For note this; *Non-uſer of itſelf, without ſome ſpecial Damage, is no Forfeiture of private Offices; but Non-uſer of publick Offices, which concern the Adminiſtration of Juſtice, or the Common-wealth, is of itſelf a Cauſe of Forfeiture* Lit. 378. 1 Inſt. 233. a.

If a *Keeper* kill any Deer without Warrant, or fell or cut any Trees, Woods or Underwoods, and convert them to his own Uſe, it is a Forfeiture of his Office; for the Deſtruction of *Vert* is, by a Mean, Deſtruction of *Veniſon*; ſo it is if he put down the Lodge, or any Houſe within the Park for putting of Hay into it for feeding of the Deer, or ſuch like, it is a Forfeiture. 1 *Inſt.* 233. *b. Benl.* 16. 4 *Leon.* 120. 1 *Anderſ.* 29. 9 *Rep.* 50, 95.

An Ejectment lies not of a Park, 1 *Cro.* 591. which is but a Liberty, as a Piſcary, but muſt be by the Number of Acres. 2 *Keb.* 460. *Pemble* and *Ster.*

If a Gentleman licenſe another to chaſe in his Park, ſuch a Perſon cannot bring others with him to hunt there without particular Words in the Licence, and a *Parker* or Keeper may not licenſe any one to hunt in his Maſter's Park.

Partridge, Is a Fowl of Warren; and the *Statutes* which relate to *Partridges*, are the ſame that concern *Pheaſants*, to which Head *I refer the Reader.*

A Warrant

A Warrant of Summons againſt one for deſtroying *Partridge* out of Seaſon. [7 *Jac.* 1. *c.* 11.]

To the Conſtable, *&c.*

Surry, } *to wit.* } WHereas *Complaint hath been made unto us* A. F. *and* T. F. *Eſquires, two of his Majeſty's Juſtices,* &c. *that* A. P. *of,* &c. *did at ſeveral Times with Nets,* &c. *kill and deſtroy ſeveral* Partridges *in,* &c. *between the Days,* &c. *being the Time prohibited by Law for doing thereof:* Theſe *are therefore to require you to apprehend the ſaid* A. P. *and to bring him before us, or ſome other of his Majeſty's Juſtices of the Peace for this County, to anſwer the Premiſſes, and be dealt with according to Law.* Given, *&c.*

Declaration for entering the Plaintiff's Free Warren, and taking away his *Partridges.*

Suſſex, } *to wit.* } J. K. *complains of* W. Y. *in the Cuſtody of the Marſhal, and ſo forth, for that the ſaid* W. *the fifteenth Day of* September *in the ſeventh Year of the Reign of the Lord the now King,* &c. *with Force and Arms, the Free Warren of him the ſaid* J. *at* S. *in the ſaid County, broke, and in the ſame, againſt the Will, Licence and Conſent of the ſaid* J. *entered, and then and there took and carried away thirty* Partridges, *and other Enormities to him did, againſt the Peace of the ſaid Lord the now King, and to the Damage of*

of the ſaid J. *fifteen Pounds*; *and therefore he brings his Suit.*

Note; *Partridges* and Pheaſants yield no Tithe of Eggs or young; though they are tame and kept in a Place incloſed. *Wood's Inſt.* 169. See **Pheaſant.**

Pedage, Is Money given for paſſing through a Foreſt.

Peers. By **Charta Foreſtæ,** *cap.* 11. 'Whatſoever Archbiſhop, Biſhop, Earl or 'Baron, coming to us at our Commandment, 'paſſing by our Foreſt, it ſhall be lawful for 'them to take and kill one or two of our Deer, 'by View of our Foreſter, if he be preſent, 'or elſe he ſhall cauſe one to blow an Horn 'for him, that he ſeem not to ſteal our Deer; 'and likewiſe they ſhall do returning from us, 'as it is aforeſaid.'

Concerning this, it is to be obſerved, that before the Making this Charter, *Peers* could not hunt in the King's Foreſts without Warrant ſo to do; neither can they now, but when they are ſent for to the Court by the King's Command, and in their Return home; and even then, four Things are to be ſtrictly obſerved, *viz.* 1. That he be either *Lord Spiritual* or *Temporal.* 2. That he be ſent for by the King. 3. That it be done by the View of the Foreſter, if preſent. 4. If he be abſent, that a Horn be blown for him. See *Table.*

Perambulation. The Subject may demand a Writ of *Perambulation* of Right, which the King in Juſtice cannot deny; and when a *Perambulation*

ambulation is duly made, returned into *Chancery*, and proclaimed in the County, the ſame is peremptory and binding againſt the Subject: And if it was not duly made, the Subject cannot of Right Claim or demand another, but the King may grant another *ex gratia*, and after the ſame is executed, it will take away the Force of the firſt. *Manwood* 45.

Form of a *Perambulation*.

THE Perambulation of the Foreſt of Waltham *in the County of the* Eſſex, *made at* Chelmsford *on* Friday *the Morrow of the* Aſcenſion of our Lord, *in the 28th Year of the Reign*, &c. *before* R. H. W. T. S. G. *Juſtices of our Lord the King, to make the ſaid Perambulation, by the Oath of* R. S. H. B. J. H. S. W. &c. *who upon their Oath ſay, that*, &c. [Here ſet down the Metes and Bounds of the Foreſt, ſhewing what is within the Foreſt, and what is out of the Foreſt,] *according to the Tenor of the great Charter of the Foreſt.* In Witneſs *whereof we the ſaid Jury have hereunto ſet our Hands and Seals the Day and Year above-written.*

Pheaſant. The *Pheaſant* is a Fowl of Warren.

By **Stat.** 11 *Hen.* 7. *c.* 17. * 'None ſhall 'take *Pheaſants* or Partridges with Engines in

* *Note*; The Act ſays, no Manner of Perſon or Perſons, of what Eſtate, Degree or Condition ſoever, ſhall, &c.

another's

'another's Ground without Licence, in Pain 'of 10 *l.* to be divided betwixt the Owner or 'Poſſeſſor of the Ground and the Proſecutor, 'to be recovered by Action of Debt, *&c.*

By **Stat.** 23 *Eliz. cap.* 10. 'None ſhall 'kill or take any *Pheaſants* or Partridges, with 'any Net or Engine in the Night-time, on Pain 'to forfeit for every *Pheaſant* 20 *s.* and for 'every *Partridge* 10 *s.* which if the Offender 'pay not within ten Days, he ſhall ſuffer one 'Month's Impriſonment, and enter into Bond '(for two Years only) with good Sureties, 'before ſome Juſtice of Peace, not to offend 'in the like.'

'The Forfeiture ſhall be recovered in any 'Court of Record, by Action of Debt, *&c.* 'and divided betwixt the Lord of the Liberty 'or Manor where the Offence is committed, 'and the Proſecutor; but in Caſe the Lord 'ſhall diſpenſe with the Offender, the Poor 'of the Pariſh are to have his Moiety, to be 'recovered by any of the Churchwardens.'

'Juſtices of Aſſiſe and Seſſions, and Stewards 'of *Leets*, have Power to hear and determine 'theſe Offences; and one Juſtice of Peace 'may examine ſuch Offender, and bind him 'over with good Sureties to anſwer it at the 'next General Seſſions, if the Offence be 'not before determined at the Aſſizes, or in 'a *Leet*.'

'This Act ſhall not reſtrain Fowlers, which 'unwillingly take *Pheaſants* or *Partridges*, and 'forthwith let them go at large.'

And

And by **Stat.** 9 *Ann. c.* 25. 'If any Perſon 'whatſoever ſhall take or kill any *Pheaſant* or 'Partridge in the Night-time; he ſhall, on 'Conviction, before one Juſtice, on Oath of 'one Witneſs, forfeit 5 *l.* Half to the Informer, 'and Half to the Poor, by Diſtreſs; for Want 'of Diſtreſs, to be ſent to the Houſe of Cor-'rection, for three Months for the firſt Offence, 'and for every other Offence four Months.'

By **Stat.** 1 *Jac.* 1. *c.* 27. §. 2. 'Every 'Perſon convicted by his own Confeſſion, or 'by two Witneſſes upon Oath, before two 'or more Juſtices of Peace, to have killed or 'taken any *Pheaſant*, Partridge, Pigeon, Duck, 'Heron, Hare, or other Game, ſhall by the 'ſaid Juſtices be committed to Gaol three 'Months, unleſs he immediately pay to the 'Churchwarden for the Uſe of the Poor where 'the Offence was committed, or he apprehend-'ed, 20 *s.* for every *Fowl* or *Hare* ſo killed; 'and after one Month's Commitment, ſhall 'before two or more Juſtices of Peace be 'bound with two ſufficient Sureties in 20 *l.* 'a-piece, with Condition never to offend in the 'like again. The Recognizance to be returned 'to the Seſſions.

'None ſhall ſell, or buy to ſell again, any 'Deer, Hare, *Pheaſant* or Partridge, (except '*Pheaſants* or Partridges reared and brought 'up in Houſes or brought from beyond Sea,) 'on Pain to forfeit for every Deer 40 *s.* Hare '10 *s.* *Pheaſant* 20 *s.* and Partridge 10 *s.* to 'be divided betwixt the Proſecutor and the Poor

'of the Pariſh where the Offence is committed.' Same *Stat.*

'Juſtices of Aſſiſe and Seſſions, and two or 'more Juſtices out of Seſſions, have Power to 'hear and determine theſe Offences.' Same *Stat.*

'This Act ſhall not reſtrain one licenſed 'in open Seſſions to kill Hawkſmeat, but then 'he muſt become bound by Recognizance in '20*l.* not to kill any Game prohibited by this 'Law; nor to ſhoot within 600 Paces of an 'Hernery, 100 Paces of a Pigeon-houſe, or 'in a Park, Foreſt or Chaſe, whereof his 'Maſter is not Owner.'

By **Stat.** 7 *Jac.* 1 *c.* 11. 'Every Perſon 'convicted by his own Confeſſion, or by two 'Witneſſes upon Oath, before two or more 'Juſtices of Peace, in ſix Months after the 'Offence, to have hawked at or deſtroyed any '*Pheaſant* or Partridge betwixt the firſt of '*July* and the laſt of *Auguſt*, ſhall ſuffer one 'Month's Impriſonment, without Bail, unleſs 'he forthwith pay to the Uſe of the Poor where 'the Offence was committed, or he apprehend-'ed, 40*s.* for every Time ſo hawking, and 20*s.* 'for every *Pheaſant* or Partridge ſo deſtroyed 'or taken.'

'If any Perſon of a mean Condition ſhall 'be convicted by his own Confeſſion, or by 'one Witneſs upon Oath before two or more 'Juſtices of Peace, to have killed or taken 'any *Pheaſant* or Partridge with Dogs, Nets 'or Engines, ſhe ſhall by the ſaid Juſtices be 'committed to Priſon without Bail, unleſs he

'forthwith

'forthwith pay, to the Uſe of the Poor where 'the Offence was committed, 20 *s.* for every '*Pheaſant* or Partridge ſo killed or taken; and 'alſo become bound, before one or more Ju-'ſtices of Peace, in a Recognizance of 20 *l.* 'never to offend in the like Kind again.' Same *Statute.*

'Every free Warrener, Lord of a Manor, 'or Freeholder, ſeiſed in his own, or his Wife's 'Right, of 40 *l.* a Year Eſtate of Inheritance, 'or Lives Eſtate of 80 *l.* or worth in Goods '400 *l.* may take *Pheaſants* and Partridges (in 'the Day-time only) in his own Free Warren, 'Manor, or Freehold, betwixt *Michaelmas* and '*Chriſtmas* yearly.' Same *Statute.*

It is to be obſerved, that the Killing of Partridges and *Pheaſants*, is prohibited in almoſt all Manner of Ways, except Hawking only; and that Hawking at them is only prohibited in two Summer Months when the Corn is growing, and the Brood is very young.

For the other *Statutes* relating to *Pheaſants*, ſee *The Table.*

Law Caſes.

A Man was indicted on *Statute* 23 *El. c.* 10. for taking *Partridges cum Retis*; but it was quaſhed, for it ſhould be *cum Retibus* (with Nets) 3 *Bulſt.* 178. The *King* and *Rivett.*

In Treſpaſs for taking *Phaſianos ſuos*, in ſuch a Place; upon Not guilty pleaded, the Plaintiff had a Verdict; and afterwards it was moved in Arreſt of Judgment, that this Declaration

was

was ill, becauſe the Plaintiff had declared for taking *Phaſianos ſuos*, whereas *Pheaſants* are Birds *feræ naturæ*; and therefore the Plaintiff cannot have ſuch a Property in them, as to call them *ſuos*; but the Judgment was affirmed, becauſe after a Verdict it ſhall be intended that theſe *Pheaſants* were dead; and then the Plaintiff might have a Property in them. *Uſher* againſt *Buſhnell*, *Raym.* 16. *Sid.* 39.

Pond. By **Stat.** *Weſtm.* 1. *cap.* 20. 'Treſpaſſers in *Ponds* ſhall give treble Damages to the Party grieved, ſuffer three Years Impriſonment, be fined at the King's Pleaſure, and give Surety never to offend again in the like Nature; and if they cannot find Sureties; they ſhall abjure the Realm, or flying, they ſhall be outlawed.'

By **Stat.** 5 *Eliz. c.* 21. '*Ponds* by Day or Night unlawfully broken down; or deſtroying the Head of any *Pond*, Moat or Dam, Stew or Pit where Fiſh are put, or wrongfully fiſhing in them, to the Intent to deſtroy, kill, take or ſteal any Fiſh, againſt the Conſent of the Owner or Poſſeſſor, or not having lawful Authority ſo to do, and being convicted at the Suit of the King or the Party grieved, ſhall be impriſoned for three Months, and pay him treble Damages, and give Security for his good Behaviour for ſeven Years, or remain in Priſon without Bail or Mainpriſe, till he do find Security.'

'The Party grieved ſhall in Seſſions, or any Court of Record, recover treble Damages againſt the Delinquent, and on Satisfaction

'ſhall

'ſhall have Liberty to procure his Releaſe of 'the Behaviour.'

By **Stat.** 9 *Geo.* 1. *c.* 21. 'Any Perſon 'armed and diſguiſed, and Breaking down the 'Head of a *Fiſh-pond*, whereby the Fiſh ſhall 'be loſt, or ſhall reſcue ſuch Offender, or pro-'cure another to join with him in ſuch unlawful 'Act, is guilty of Felony without Benefit of 'Clergy.' See *Table.*

* **Preſcription.** The Form of a *Preſcription* in the Foreſt, differs from a *Preſcription* at Common Law; for a Claim, that he and his Anceſtors *tempore quo*, is good, without ſaying, that he and his Anceſtors, and all thoſe whoſe Eſtate he hath in certain Lands. *Manwood* 232.

Though a Man may *preſcribe* to hunt wild Beaſts in his own Land, yet a *Preſcription* is not good to hunt the King's wild Beaſts, though they are in his own Land, *viz.* thoſe which eſcape out of the Foreſt into the Purlieus. *Ibid.* 293. Vide *Table.*

Preſentment. Every *Preſentment* for an Offence done in the Foreſt, in *Vert* or *Veniſon*, muſt be certain in Reſpect of the *Perſon*, *Place*, *Thing*, *Inſtruments*, *Manner of the Act*, *Value of the* Vert.

1. In Reſpect of the *Perſon*; it muſt ſet forth the Name and Surname, and the Place where he dwelleth.

* *Preſcription*, Is a Title acquired by Uſe and Time, and allowed by Law.

2. In Reſpect of the *Place*; it muſt ſet forth, that it was done in ſuch a Place within the Foreſt, that it may appear the Fact was committed therein.

3. In Reſpect of the *Thing*; it muſt ſet forth, that the Offender killed a *Buck* or *Doe*, or as the Caſe is.

4. In Reſpect of the *Inſtruments*; it muſt ſet forth, that the Offender entered the Foreſt with a *Croſs-bow*, *Long-bow*, *Gun*, *&c.* and did there kill a Deer.

5. The Manner of the *Act*, and the Value of the *Vert*, muſt be ſet forth as the Facts are.

There is ſome Variance between the Form of an Entry of a *Preſentment* in the *Swainmote*, and in the Court of *Attachments*; for in the *Swainmote* the Words are, *It is preſented by the Foreſters and the twelve Jurors, and convicted by the Verderors*, &c. but in the Court of *Attachments* thus, *It is preſented by* A. B. *Foreſter*, &c.

Preſentments made in Court of *Attachments* before the *Verderors*, and inrolled by them in the Rolls of the Foreſt, muſt be thence tranſmitted to the Court of *Swainmote*, and the Offender may traverſe ſuch *Preſentment* before it comes to the *Swainmote*, but not after; and a *Preſentment* in the *Swainmote* is not traverſable. *Manwood* 237, 238. Vide *Table*.

Principals. In Treſpaſſes in Foreſts all are *Principals*. 4 *Inſt.* 314. *Manwood* 214.

Property, Is either abſolute or qualified, and a Man may have an abſolute *Property* in ſeveral Things, which are not *feræ naturæ*, as in *Ducks*, *Poultry*, *Geeſe*, *&c.* but he cannot have

have ſuch *Property* in Things which are *feræ naturæ*, as *Wild Fowl*, (viz.) *Partridge*, *Pheaſants*, &c. and wild Beaſts, ſuch as *Conies*, *Hares*, &c. or *Fiſh* in the Sea or in Rivers; but he may have an abſolute *Property* in other Things of a baſe Nature, ſuch as *Grey-hounds*, *Hounds*, *Maſtiffs*, *Spaniels*, &c. and for ſuch Things, if taken away, an Indictment will lie for a Treſpaſs, or the Party grieved may have an Action of Treſpaſs, *&c.* and recover Damages. However a Man may have a qualified *Property* in Things which are *feræ naturæ*, which *Property* is poſſeſſory, and only for a certain Time, and may be obtained by Induſtry, (*viz.*) by taking ſuch Creatures, and making them tame; and in ſuch Caſe a Man may have a poſſeſſory *Property* in them, ſo long as they continue tame, and do not regain their natural Liberty. Likewiſe a qualified *Property* may be gained in Things *feræ naturæ*, by Reaſon of *Impotency and Place*, as of young Hawks or young Pigeons in their Neſts bred in my Ground; for which I may have an Action of Treſpaſs, if taken when they cannot fly. A qualified *Property* may alſo be gained in ſuch Things, by Reaſon of a Privilege in a Park or Warren, as Deer, Conies, *&c.* Fiſh in a Trunk, or Pigeons in a Dove-houſe; but none of theſe Things can be properly called *ſuos*, becauſe no Perſon hath an *abſolute Property* in them, and therefore Felony cannot be committed by taking them away, unleſs reduced to be tame; though whilſt they are wild, they do really belong to the Owner of the Park or Warren. 7 *Rep.* 17, 18. 11 *Rep.* 50. *Wood's Inſt.* 314.

Cro. Car. 553. *March* 48. Sed vide **Deer, Conies, Fiſh,** &c.

Proto-Foreſter, Was one whom our ancient Kings uſed to make Chief of *Windſor Foreſt*, to hear Cauſes of Death or Maim, or of Slaughter of the King's Deer in the Foreſt.

Purlieu, From *Pur*, *i. e.* clear, intire, and exempt; and *Lieu*, *i. e.* a Place: So that it is a Place intire or exempt from the Foreſt, though adjoining to the Foreſt, meered and bounded with unremoveable Marks and Boundaries, and known by Matter of Record only, and ſignifies thoſe Grounds, which *Hen.* 2. *Ric.* 1. or King *John* added to their ancient Foreſts over other Mens Grounds, and were diſafforeſted by Force of the Statute of *Chart. Foreſt. c.* 1 & 3. and the * Perambulations and Grants thereupon: By this Diſafforeſtation the Owners of the Grounds within the *Purlieu* may at their Will and Pleaſure, fell, cut down, eradicate, and ſtub up all the Timber, Woods and Underwoods, convert their Paſtures, Meadows and other Grounds to arable, incloſe them in with any Kind of Incloſure, build and erect new Edifices upon the ſame or any Part thereof, and to diſpoſe and uſe the ſame after the Diſafforeſtation, as if they never had been afforeſted. 4 *Inſt.* 303. *Manwood* 242, 301.

* By the Perambulation the *Purlieu* is made, for the *Purlieu* and the Perambulation are diſtinct Things, and the right Name of the Place diſafforeſted is *Purlieu*. 4 *Inſt.* 303.

Notwith-

Notwithſtanding the *Purlieu* is exempt from the Foreſt, yet the *Purlieu-man* is in ſome Caſes reſtrained; for he muſt not hunt in his own *Purlieu* in the *Night*, nor on a *Sunday*, nor in the *Fence Month*, nor oftener than *three Days in a Week*; nor with any other Company, than his own Servants; nor forty Days *before* and *after* the *King's Hunting*; he muſt not *foreſtal* or hunt Deer out of Seaſon: All which has been taken for Law ever ſince *Purlieus* were firſt made. *Manwood* 297, 298, 299.

Offences committed in the *Purlieus*, contrary to the Laws aforeſaid, are accounted Offences of the Foreſt, becauſe they are Injuries done to the wild Beaſts there; and ſuch Offences are to be preſented by the *Rangers* at the next Court of *Attachments*, to be holden for the Foreſt adjoining to the *Purlieu*, or elſe at the next *Swainmote* or *Juſtice-Seat*, which ſhall firſt happen to be kept, that ſuch Treſpaſſers and Offenders in the *Purlieu* may be puniſhed according to the Quality of the Offence, after a lawful Trial at the *Swainmote*; after ſuch Trial had and Conviction of them, they are to be bound with good Sureties to the good Behaviour of the Foreſt, until the next *Juſtice-Seat*, and then they are to appear there, and to be puniſhed according to the Direction of the Lord Chief Juſtice in *Eyre*, either by Impriſonment, Fine or Ranſom. *Ibid.* 300.

If a *Purlieu-man*'s Dog faſtens on the Deer before he recovers the Boundaries of the Foreſt, and by Force and Strength of the Beaſt is drawn into the Foreſt, and there kills the Beaſt, the

Purlien-man may enter by Reaſon of the firſt Property which he had *ratione ſoli*, and by the Purſuit and Poſſeſſion which he had by the faſtening of his Dog, and may take and carry the Deer away. *Ibid.* 294. Vide *Table.*

Purlieu-men, Are thoſe who have Grounds in the *Purlieus* of a Foreſt, and if duly qualified according to Law, [See **Qualification,**] they may hunt in their own Grounds. *Manwood* 293.

Purpreſtures, In the King's Foreſts are of four Sorts. 1. *Purpreſtures againſt the King*; as where a Man doth new erect or build any Dwelling, or other Houſe in the Foreſt without Licence. 2. *Againſt the King and Publick*; as where a Man builds a new Houſe or Mill on the King's Highway, or Waſte in the Foreſt. 3. *Againſt the King and a common Perſon*; as where a Man hath Land incloſed, lying in a Foreſt, and adjoining to the Waſte of a Lord of a Manor, and the Owner incroacheth on that Waſte, by removing a Hedge and taking in Part of it, and ſo wrongfully inlarging his own Ground. 4. *Againſt a common Perſon only*; as where a Man hath an ancient Dwelling-houſe, or other Houſe in the Foreſt, and by inlarging it he incroacheth upon the Lands of his Neighbour. *Manwood* 304, 308.

Where a Man doth wrongfully incroach any Thing to himſelf in a Foreſt, either upon the King or any other Perſon, or doth take upon himſelf any Juriſdiction or Franchiſe there, without lawful Warrant, are *Purpreſtures. Ibid.* 209.

The

The Puniſhment of thoſe who commit *Purpreſtures* is of two Kinds. 1. *Purpreſtures on the King's Land*, is to be committed without Bail until he paid a Fine to the King, which Fine is arbitrary, at the Will of the Chief Juſtice, and the Place on which the *Purpreſture* was made, is to be ſurrendered to the King. 2. *On his own Lands*, is for the *firſt Offence* to be committed until he be delivered by ſix Pledges; for the *ſecond*, until he be delivered by twelve; and for the *third*, to be committed till he pay a Fine to the King, in which Caſe he is not bailable, but at the Diſcretion of the Lord Chief Juſtice in *Eyre*. *Ibid.* 210.

It is neceſſary, that in all Indictments or Preſentments for *Purpreſtures*, there be a ſufficient Certainty in theſe following Particulars. 1ſt, *Who* made the *Purpreſture*; in what Manner and when the ſame was done. 2d, *Where* the Ground lies in which it was made; in whoſe Tenure it is, and what Quantity the ſame doth contain, and what is the yearly Value thereof. 3d, *Whether* the *Purpreſture* was made on the Soil and Inheritance of the King, or of a common Perſon. 4th, *In* whoſe Fee the ſame is; in what Pariſh, and who hath the Inheritance. See *Table*.

Putura, is a Cuſtom claimed by Keepers in Foreſts, and ſometime by Bailiffs of Hundreds, to take Man's-meat, Horſe-meat and Dog's-meat, of the Tenants and Inhabitants, within the Perambulation of the Foreſt or Hundred. 4 *Inſt.* 307.

Quail, The *Quail* is a Fowl of Warren. 1 *Inſt.* 233. *a.*

Qualification. By **Stat.** 13 *Rich.* 2. 'A 'Layman muſt have 40 *s. per Annum*; and a 'Prieſt 10 *l. per Annum*; otherwiſe he ſhall not 'keep or have any *Grey-hound*, *Hound*, *Dog*, '*Ferret*, *Net* or *Engine* to deſtroy *Deer*, *Hares*, '*Conies* or any other Gentleman's Game.'

By **Stat.** 1 *Jac.* 1. *c.* 27. 'A Man muſt 'have 10 *l. per Annum Inheritance*, or a *Leaſe for* '*Life* of 30 *l. per Ann. or be worth* 200 *l. in* '*Goods*, or be the Son of a Baron or Knight, 'or Heir apparent of an Eſquire, otherwiſe 'he ſhall not keep a *Grey-hound*, *Dog* or *Net*, 'to kill *Deer*, *Hare*, *Pheaſant* or *Partridge*.'

By **Stat.** 7 *Jac.* 1. *cap.* 11. 'Any Man, 'who is Lord of a Manor, or who hath a free 'Warren, or an Inheritance of 40 *l. per Annum*, 'or Freehold of 80 *l. per Annum*, *or Goods worth* '400 *l.* may either by himſelf, or his Servants 'by his Licence, take *Pheaſants* or *Partridges* 'in the Day-time, *within their own Grounds or* '*Precincts*, betwixt *Michaelmas* and *Chriſtmas*, 'and at no other Time.'

By **Stat.** 22 & 23 *Car.* 2. *c.* 25. 'Perſons 'not having Lands, or ſome other Eſtate of '*Inheritance*, *of* 100 *l.* per Ann. *in their own or* '*their Wife's Right*, *or for Life*, *or a Leaſe for* '*ninety-nine Years of* 150 l. per Ann. *other than* 'the Son and Heir of an Eſquire, *or other Perſon* '*of ſome higher Degree*, or Lord of a Manor, or 'Owners and Keepers of Parks, Chaſes, or 'Free Warrens ſtocked with Deer or Conies, 'ſhall not keep *Bows*, *Engines*, *Ferrets*, *Grey-*

'*hounds*,

'*hounds*, *Guns*, *Hare-pipes*, *Lowbels*, *Lurchers*, '*Nets*, *Setting Dogs*, *Snares* or *Trammels* for 'taking *Conies*, *Hares*, *Pheaſants*, *Partridges* or 'other Game.'

Note; Tho' a Gun is mentioned (*int' al'*) in the above Statute, yet in the Statute of 5 *Ann.* the Word *Gun* is omitted among the Inſtruments mentioned for the Deſtruction of the Game; therefore I apprehend a Man may keep a Gun in his Houſe for his Safety; and that keeping a Gun barely without *uſing*, or *Intention laid*, is not within the Statute 5 *Ann. c.* 4. *ſect.* 4.

Rail, Is a Fowl of Warren. 1 *Inſt.* 233.

Ranger. A *Ranger* is made by the King's Letters Patent, who alloweth every one of them a yearly Fee of 20*l.* or 30*l.* payable out of the *Exchequer*, and a Fee-Deer, both red and fallow, out of the Foreſt; his Office conſiſts in ranging and walking about the *Purlieus*, to drive the wild Beaſts ſafely into the Foreſts; and preſenting all Offenders and unlawful Hunters, and what Treſpaſſes they have done in the *Purlieus*, in their Walks.

And to the Intent that every *Ranger* ſhould be the more careful to execute his Office, he muſt be ſworn, and the Form of his Oath is as followeth.

The Oath of a *Ranger*.

YOU ſhall well and truly execute the Office of a Ranger *in the Purlieus of* W. *upon the Borders of the King's Foreſts of* W. *you ſhall re-*

chaſe and with your Hounds drive back again the wild Beaſts of the Foreſt, as often as they ſhall range out of the ſame Foreſt into your Purlieus: You ſhall truly preſent all unlawful Hnnting and Hunters of wild Beaſts of Venary and Chaſe, as well within the * Pourallees, *as within the Foreſt, and thoſe and all other Offences you ſhall preſent at the next Court of Attachments or Swainmote which ſhall firſt happen.*

So help you God.

Note; In this Oath is contained the whole Office and Duty of a *Ranger*.

Ranſome, Is a Sum of Money paid for the Pardoning ſome great Offence, and ſetting the Offender at Liberty who was under Imprisonment.

Rape of the Foreſt, *(Raptus Foreſtæ)* Is Treſpaſs committed in the Foreſt by Violence.

Reafforeſted, Is where a Foreſt which had been diſafforeſted, is again made a Foreſt.

Receiver. Whoſoever *receiveth* within the Foreſt any Malefactor either in hunting or killing, knowing him to be ſuch a Malefactor, or any Fleſh of the King's Veniſon, knowing it to be the King's, is in this Caſe a principal Treſpaſſer; but if the Receipt be out of the Foreſt, he cannot be puniſhed by the Laws of the Foreſt. 4 *Inſt.* 317.

Reclaim, Signifies to make tame.

* Perambulations.

Reeve. The *Reeve* of every Town in the Foreſt, and four Men with him, muſt appear upon the firſt Sitting of the Juſtice-Seat, or the whole Vill ſhall be amerced; but if after Appearance and an Adjournment they or any of them make Default, then he or thoſe who made ſuch Default, ſhall be amerced. *W. Jones* 279. *Manwood* 15, 18.

Regarder, Is an Officer of the King's Foreſt, and is either made by the King's Letters Patent, by the Chief Juſtice in *Eyre*, or by the King's Writ to the Sheriff; but all the *Regarders* muſt be ſworn by the Sheriff in the County-Court, by Authority of a Writ to him directed, before they can make the Regard of the Foreſt. *Manwood* 216, 219, 220.

The Oath of a *Regarder*, (containing his Office and Duty.)

YOU ſhall well and truly ſerve our Sovereign Lord the King in the Office of Regarder *of the Foreſt of* W. *you ſhall make Regard of the ſame Foreſt in ſuch Manner as the ſame hath been accuſtomed to be made; you ſhall range throughout the whole Foreſt, and through every Bailiwick of the ſame, as the Foreſter there ſhall lead you to view the ſame Foreſt: And if the Foreſters will not or do not know how to lead you to make the Regard or Range of the Foreſt, or that they will conceal from you any Thing that is forfeited to the King, you yourſelves ſhall not let for any Thing, but you ſhall ſee the ſame Forfeiture, and cauſe the ſame*

to be inrolled in your Roll; you ſhall inquire of all Waſtes, Purpreſtures and Aſſarts of the Foreſt, and alſo of the Concealments of any Offence or Treſpaſs in the Foreſt, either in Vert or Veniſon, by any Officers of the ſame Foreſt: And all theſe Things you ſhall to the utmoſt of your Power do.

So help you God.

There muſt be twelve *Regarders*, otherwiſe there cannot be any Regard made in the Foreſt; for if any under that Number ſhould make a Certificate of their Inquiſition, 'tis not a ſufficient Charge againſt the Offender, for if eleven are agreed on a Verdict, 'tis not good if one diſagree, and they muſt *ſee*, *view* and *inquire* the Certainty of every Offence given them in Charge; and when they find any Offences done, they are to write the ſame fairly on a Roll, and bring it either to the *Court of Attachments*, or *Swainmote*; at the firſt of which Courts all ſuch Matters as are ſo found by the *Regarders*, they are to certify under their Hands and Seals, and preſent the ſame under their Hands and Seals to the Chief Juſtice in *Eyre* at the next *Eyre*; and ſuch Regard ought to be made every third Year. *Manwood* 317, 320, 321, 324, 328.

Note; A Man cannot be a *Regarder* for any Foreſt but for the King's only. *Manwood* 324.

All Woods and Lands, which are Part of the Foreſt, are within the *Regard*; and all which are within the Bounds, and yet no Part of the Foreſt, are out of the *Regard*. *Ibid.* 43, 330. See the *Table*.

Replevin. If a Man hath a Park within the Bounds of any Foreſt, which is not incloſed according to the Aſſiſe of the Foreſt, *&c.* it ſhall be ſeized into the King's Hands; and then the Party ſhall have a ſpecial Writ of *Replevin*, to *replevy* the Park out of the King's Hands. *New Nat. Brev.* 154.

The Form of a *Replevin* of a Park within the King's Foreſt, ſeized for not being incloſed.

GEORGE, &c. *To our faithful and well beloved* J. C. *Warden*, &c. *or his Deputy in the Foreſt of* W. *Greeting: We command you, that foraſmuch as the Park of* A. B. *which is within the Meets of our Foreſt aforeſaid, is ſeized, as it is ſaid, into our Hands, for that it was not incloſed according to the Aſſiſe of the Foreſt; if according to the Aſſiſe of the Foreſt it is repleviable, cauſe Replevin to be made thereof to the ſaid* A. B. *until the Coming of our Juſtice of our Foreſt into the County aforeſaid.* Witneſs, *&c.*

Cur. ordered an Attachment (unleſs Cauſe) againſt the Town Clerk of *Guildford*, and a Defendant, convicted on the Game Act, for *granting* and *ſuing out* a *Replevin* of Goods diſtrained for the Penalty. But on ſhewing Cauſe the next Term, when *Eyre* J. only was preſent, he diſcharged the Rule, becauſe it was only a Contempt to the inferior Juriſdiction of the Juſtices; and in that Caſe the *King's Bench* never interpoſes.

poſes. *T.* 9 G. 1. The *King* v. *Burchett.* 1 *Str.* 567.

Cur. granted an Attachment againſt the Under Sheriff of *Cumberland*, for granting a *Replevin* of Goods diſtrained on a Conviction for Deer Stealing. *E.* 16 *Geo.* 2. *Dominus Rex* v. *Monkhouſe.* 2 *Str.* 1184.

Riding-Foreſter. His Duty is to lead the King in his Hunting. *W. Jones* 277.

Roe, Was a Beaſt of Chaſe, of which there are few or none in *England.*

Rolls. Sir *Richard Harriſon* and Sir *Charles Howard* being Verderors, were, for delivering up their *Rolls* in Paper, whereas they ought to be ingroſſed in Parchment, fined 20*l.* a-piece. *W. Jones* 167. *Manwood* 331, 334.

Scotale, Is where any Officer of the Foreſt keeps an Alehouſe, and by *Colour of his Office* cauſeth Men to come to that Alehouſe in the Foreſt, to ſpend their Money; and this, as alſo *Extortion* by *Colour of his Office*, is prohibited by **Charta Foreſtæ**, *c.* 7. *Viz.* 'No Foreſter 'or Beadle from henceforth ſhall make *Scotale*, 'or gather Garb, or Oats, or any Corn, or 'Lamb, or Pig; nor ſhall make any Gather-'ing, but upon the Sight and upon the Oath 'of the twelve Regarders, when they ſhall make 'their Regard.' The Offence is to be inquired by twelve Jurors at the *Swainmote*; and if the Officer is attainted, he is to be puniſhed and turned out of his Office. *Manwood* 168, 169, 334.

The

The Prohibition in *Charta Foreſtæ* aforeſaid implies, That in ſome Caſes *Scotales* may be lawful, *viz.* If they are found and preſented upon the View of the Regarders, and upon their Oaths, when they make the Regard of the Foreſt, that ſuch *Scotales* had a lawful Beginning, which muſt be either by *Tenure*, *Grant* or *Preſcription*; ſo that it may appear the Thing was lawfully done, by Right and good Title, and not newly and wrongfully exacted on the People by *Colour of the Office* of any ſuch Officer. *Ibid.* 169, 170, 171, 335.

Sear-wood, Dead Boughs cut off from Trees in a Foreſt.

Staff-herding. The Miniſters of the Foreſt are to inquire, whether thoſe who claim a Right of Common in a Foreſt, do uſe *Staff-herding*, *i. e.* Whether they uſe to have one to follow their Cattle; for that is not allowable of common Right, becauſe by that Means the Deer are frighted, which would otherwiſe feed with the Cattle; beſides he who looks after the Cattle will drive them into the beſt Paſture, and ſo the Deer will have only what is left: Therefore if any Man hath Right of Common, and under Colour thereof uſeth *Staff-herding*, his Common ought to be ſeized till he hath paid a Fine for the Abuſe. *W. Jones* 282. *Dean and Chapter of Salisbury*'s Caſe.

Stalking. By **Stat.** 19 *Hen.* 7. *c.* 11. 'No Perſon ſhall *ſtalk*, or cauſe any other to 'ſtalk, with any Buſh or Beaſt to any Deer in 'a Park, Chaſe or Foreſt, or without, except 'in his own Grounds, without Licence of the 'Owner,

'Owner, Maſter of the Game, or Keeper of the 'Foreſt, Chaſe or Park, on Pain of Forfeiture 'for every Time 10*l.* to any Perſon who will 'ſue for the ſame by Action of Debt; and two 'Juſtices of Peace in Seſſions may examine the 'Offenders, and commit them to Priſon till 'they have ſatisfied the Forfeiture, whereof 'the ſaid Juſtices are to have the tenth Part.'

Steward. The *Steward* is a judicial Officer of the Foreſt, and muſt be one learned in thoſe Laws; he is to join with the Verderors, and direct them in their Proceedings, and to give the Charge at the *Swainmote*. 4 *Inſt.* 310. *Manwood* 34, 340, 411. See the *Table*.

Stickler, An Officer formerly who cut Wood for the Priory of *Edcroſe*, within the King's Park at *Clarendon*.

Surcharger, Is one who having Common in a Foreſt *ſurcharges* the ſame, *i. e.* puts more Cattle to depaſture than he ought; in ſuch Caſe, upon Complaint of the Officers of the Foreſt, that the ſame is ſo much *ſurcharged*, that there is not ſufficient Paſture left for the Deer, a Commiſſion may be directed out of *Chancery* to the King's Lieutenant of the Foreſt, and the Verderors and Chief Foreſters there; commanding them to inquire by the Oath of good and lawful Men, what Number of Acres the Place doth contain, wherein the *Surcharge* is ſuppoſed to be made; and what Number of Beaſts are commoning therein, and whoſe they are; and what Pariſhes, Villages and Hamlets ought of Right to have any Common there; and how many Meſſuages and Cottages there a. in each

of

of them; and how many Acres of Land do belong to every Houſe: And then by computing how many Beaſts may common in the ſame, leaving ſufficient Paſture for the Deer, they ſhall rate and apportion every Man what Number of Beaſts and of what Sort he may keep. *Manwood* 96.

A *Surcharger* of a Foreſt ſhall be indicted and fined for the ſame to the King, and impriſoned till paid. *Ibid.* 97.

Swainmote, A Compound of two *Saxon* Words, Spain, *i. e. Country-Swain*, and mote, *i. e.* a *Court*, is a Court of * Record preparative to the Juſtice-Seat held before the Verderors as Judges by the Steward of the *Swainmote* thrice in the Year, *viz.* the fifteenth Day after St. *Michael*, about the Feaſt of St. *Martin*, and fifteen Days before the Feaſt of St. *John Baptiſt*.

At this Court all the † Foreſters, (who are to preſent their Attachments), and other Officers are obliged to appear, and ſo are the Freeholders within the Foreſt to be upon the Inqueſt or Jury, who are to ‖ inquire of all thoſe who own Suit to the *Swainmote*; of Aſſarts, Purpreſtures, of taking away or removing Bounds; of making Mines or Claypits; of Mills, Houſes, *&c.* if there are more Foreſters or Walkers within the Foreſt than uſual, of Oppreſſions and Extortions by Officers; of ſurcharging Common;

* *Wood's Inſt.* 496. 4 *Inſt.* 289. † *Manwood* 339. ‖ *Wood's Inſt.* 496. *Manwood* 340, 341, 342, 343. *Crompt. Jur.* 180, 181, 182, 183.

of

of burning Heath or Fern; and of all other Abuſes and Treſpaſſes in Vert and Veniſon.

If at the *Swainmote* the Preſentment of the Foreſters is found true by the Jury concerning *Vert* or *Veniſon*, then the Offender ſtandeth convicted, and cannot * traverſe the Indictment.

Obſerve; This Court may inquire and convict, † but cannot give Judgment: Therefore a *Swainmote* without a Juſtice-Seat is of no Force. Vide *Table*.

Swan, Is a Royal Bird, and by **Stat.** 22 *Ed.* 4. *c.* 6. 'None (but the King's Son) 'ſhall have any Mark or Game of *Swans* of his 'own, or to his Uſe, except he have Lands 'and Tenements of Freehold worth five Marks '*per Annum*, beſides ‖ Repriſes; in Pain to 'have them ſeized by any having Lands of that 'Value, to be divided betwixt the King and the 'Seizor.'

Law Caſes.

The Reſolution in the Caſe of *Swans*, in 7 *Coke Rep.* 16. is, That all *Swans* ſwimming in a common River, which have gained their natural Liberty, may be ſeized for the King's Uſe, becauſe they are *Volatilia regalia*; but yet a Subject may have a Property in them, if ſwimming in his own River; and that if they get into a common River, he may retake them upon

* 4 *Inſt.* 290. *Manwood* 340. *Wood's Inſt.* 497.
† 4 *Inſt.* 290. 2 *Bulſt.* 298. ‖ Theſe are Duties or Deductions which are yearly paid out of Lands.

a freſh

a freſh Purſuit. That *Cygnets* ſhall be equally divided between the Owners of the *Swans*; but that upon the River *Thames*, the Owner of the Lands next the River where the *Swans* have their Neſts ſhall have the third Part of the *Cygnets* by Cuſtom. That a Man may preſcribe to have *wild Swans*, but not as it was done in this Caſe; for the Defendant ought to have ſet forth, that the *Abbot and Convent, &c. and all thoſe whoſe Eſtate they had, &c.* uſed to enjoy all the Profits of *Swans, &c.*

Stealing *Swans* marked and pinioned, or unmarked, if kept in a Mote, Pond, or private River, and reduced to Tameneſs, is Felony. *Hawkins Pl. Co.* 1 *B.* 94. Like of young *Cygnets*. *Co.* 7. 27.

Note; No Fowl can be a Stray, but a *Swan*. 4 *Inſt.* 280. See *p.* 80 & 81.

Tithes. A Foreſt (though in a Pariſh) ſhall pay no *Tithes* while in the Hands of the King; but otherwiſe, if in the Hands of a Subject, or be diſafforeſted. 1 *Roll. Abr.* 655. 3 *Cro.* 94.

A Park pays *Tithe* of Deer and Herbage by Cuſtom; if converted into Tillage, it ſhall pay *Tithe* in Kind. *Wood's Inſt.* 169. See *Page* 199.

Triſtis, Is an Immunity, whereby a Man is freed from Attendance on the Lord of a Foreſt when he is diſpoſed to chaſe within the Foreſt; and by this Privilege, he ſhall not be compelled to hold a Dog to follow the Chaſe, or ſtand at any Place appointed, which otherwiſe

he is obliged to on Pain of Amerciament. *Jacob's Law Dict.* sub *Tit.*

Tunnels. By **Stat.** 4 & 5 *W.* & *M. cap.* 23. 'If any Person, not qualified by Law, do 'keep any Bows, Greyhounds, Setting-dogs, 'Ferrets, Coney-dogs, Hays, Lurchers, Nets, '*Tunnels*, Low-bells, Harepipes, Snares, or 'other Instruments for Destruction of Game, 'and cannot give a good Account to a Justice, 'before whom he is brought, how he came 'thereby, or produce the Party of whom he 'bought them in some convenient Time, or 'some credible Person to depose upon Oath of 'the Sale thereof, he shall be convicted by the 'said Justice, and forfeit not under 5 *s.* nor above '20 *s.* to be divided between the Informer and 'the Poor of the Parish where the Offence was 'committed, to be levied by Distress and Sale, '*&c.* and for Want of Distress to be committed 'to the House of Correction not exceeding one 'Month, nor less than ten Days, there to be 'whipt and kept to hard Labour. And if any 'Person shall not before the same Justice give 'such Evidence of his Innocency as aforesaid, 'he shall be convicted thereof in like Manner 'as the Person first charged therewith is hereby 'directed to be convicted; and so from Person 'to Person, till the first Offender shall be dis-'covered.' See *p.* 145 & 147.

Tradesman. See **Apprentice.**

Venison, Is one of the greatest Ornaments of the Forest, and is a Word of Art, proper only to Beasts of Forest or Chase; and Lord *Coke* in his

his 4 *Inſt.* 316. ſays, That whatſoever Beaſt of the Foreſt is for the Food of Man, is *Veniſon*, and whatſoever Beaſt of the Foreſt is not for Food of Man, is no *Veniſon*. See *Table*.

Verderor, Is a judicial Officer of the King's Foreſt; and he is to obſerve and keep the Aſſiſes or Laws of the Foreſt, and to view, receive and inrol the Attachments and Preſentments of all Manner of Treſpaſſes of the Foreſt in *Vert* and *Veniſon*, and to do equal Right and Juſtice as well to the Poor as to Rich.

Upon a Certificate made to the King in his Court of *Chancery*, That *T. B.* one of the *Verderors* of the Foreſt of *D.* is dead, there is granted a Writ *de Viridario Eligendo*, directed to the Sheriff of the County where the Foreſt is, thereby commanding him, in his full County, to chooſe another, *Manwood* 349. in the ſame Manner as Coroners. *New Nat. Br.* 366.

The Form of the Writ.

GEORGE the Second, *&c. To our Sheriff of* Glouceſter, *Greeting. Becauſe* T. B. *late one of our Verderors of our Foreſt of* D. *is dead, as we are informed, therefore we command you, if ſo it is, that then in your full County, with the Aſſent of the ſame County, you cauſe to be elected one other* Verderor *in the Place of the ſaid* T. B. *who will upon his Oath take the ſame, as is cuſtomary, to do, obſerve and execute, what belongs to the Office of* Verderor *in the Foreſt aforeſaid; nevertheleſs cauſe to be elected him who is beſt knowing and able to execute that Office, and*

let

let his Name be known to us. Witneſs, &c. *F. N. B.* 164, 166.

When he is elected, the Sheriff muſt ſwear him as follows:

The Form of the Oath, and which points to him out his Office and Duty.

YOU ſhall well and truly ſerve our Sovereign Lord the King in the Office of a Verderor *in the Foreſt of* D. *you ſhall, to the uttermoſt of your Power, do the beſt you can for the Profit of the King, ſo far as it doth appertain for you to do; you ſhall preſerve the antient Rights and Franchiſes of the Crown; you ſhall not conceal from his Majeſty any Right and Privileges, nor any Offence in Vert or Veniſon, nor any other Thing: You ſhall not withdraw or abridge any Default, but ſhall endeavour yourſelf to manifeſt and redreſs the ſame, and if you cannot do that of yourſelf, you ſhall give Knowledge thereof to the King, or his Juſtice of the Foreſt. You ſhall deal indifferently with all the King's Liege People: You ſhall execute the Laws of the Foreſt, and do equal Right and Juſtice, as well unto the Poor as to the Rich, in that appertaineth to your Office: You ſhall not oppreſs any Perſon by Colour thereof, for any Reward, Favour or Malice; all theſe Things you ſhall, to the utmoſt of your Power, obſerve and keep.*

So help you God.

The

The Perſon thus choſen ought to be an Eſquire, or Gentleman of good Eſtate, and learned in the Foreſt Laws; and becauſe he is choſen in ſome Manner as a Coroner; ſo in ſome Reſpects his Office is alike, for as a Coroner is to make Inqueſt *upon the View of the Body*, and upon the Oath of twelve Men, how and in what Manner the Perſon was killed; ſo a *Verderor*, upon Notice given, is to view the Deer, which are killed or hurt, and to take an Inquiſition *by four of the next Villages to the Foreſt*, how and by whom they were killed; which Inquiſition ſhall be written in the Roll, the Finder ſhall be put by ſix Pledges, and the Fleſh ſhall be ſent to a Spittle-Houſe, if by the Teſtimony of the *Verderors* and Country there be any nigh; but if there be no ſuch Houſe nigh, the Fleſh ſhall be given to the Poor and Lame; the Head and Skin ſhall be given to the next Town, and the Arrow, if there be any found, ſhall be preſented to the *Verderor*, and inrolled in his Roll. *Note*; If the Deer is fit to be eaten by the better ſort of People, 'tis then to be diſpoſed of at the Pleaſure of the Juſtice of the Foreſt. *Manwood* 350. *The Aſſiſes of the Foreſt* 7. *Manwood* 4 9.

There are uſually in every Foreſt four *Verderors*; they are liable to be removed for Tranſgreſſions, but if the Suggeſtion is falſe, on Certificate thereof, and Commiſſion out of Chancery, the Sheriff by Writ is to reſtore him. *Manwood* 352. *Fitz. New Nat. Brev.* 383.

By *Aſſiſes and Cuſtoms of the Foreſt*, *c.* 21. 'When *Verderors* have taken an Inqueſt, one

'ſhall

'ſhall ſet to his Seal, and the other keep the 'Roll; and ſo from Time to Time till the 'coming of the Juſtice: Then the firſt Day 'he and all the Miniſters ſhall preſent the Roll, 'or elſe they ſhall be amerced, and Mainpri-'ſors that Day ſhall be preferred for the Foreſt, 'or elſe they ſhall incur a Seizure.'

If a *Verderor* dies, his Heir is to bring in the Roll of his Anceſtor's Time. 4 *Inſt.* 312. See *Rolls*.

If the *Verderor* alien his Land or die ſeiſed, and no Man bringeth in the Rolls, then the Land ſhall be ſeized by the Sheriff, which the *Verderor* had, until the Rolls be brought in: And if the Rolls be loſt, then till he make his Fine, and have his *Ouſter le Main*, *i. e.* a Livery of his Lands out of the King's Hands. *Ibid.* See the *Table*.

Vert. *Green-Hue*, Is one of the principal Ornaments of the Foreſt, (and *Veniſon* is the other) and is every Tree, Under-wood, Buſh, and ſuch like growing in a Foreſt, and bearing green * Leaves, which may cover or feed the Deer, and is of three Sorts, *viz.* *Over-Vert*, which is great Woods and Trees, as well thoſe which bear no Fruit as thoſe which do. *Nether-Vert*, which is properly all Manner of Under-woods, Buſhes, Thorns, *&c.* and *Special Vert*, which may be either *Over* or *Nether Vert*, or both if it bears Fruit, for nothing is accounted *Special Vert*, but ſuch which beareth Fruit to feed the

* *Vert* comprehends every Thing which bears *Green* Leaves in the Foreſt. *Manwood.* 146.

Deer,

Deer, unleſs it is in the King's Demeſne Woods and then every Tree which grows therein, whether great or ſmall Wood, or whether it beareth Fruit or not, is accounted *Special Vert*, and is privileged in a particular Manner; and therefore the Offenders in this Kind of *Vert*, which is the *King-Vert*, are more ſeverely puniſhed than thoſe who offend in the *Vert of other Men*; for whoſoever cuts this *Vert* and carries them away with Cart and Horſes, *&c.* both Cart and Horſes, *&c.* are forfeited to the King, and the Offender ſhall be fined to the Value of the Wood. 4 *Inſt.* 317. *Manwood* 354, 355, 356, 357, 358.

The *Vert of common Perſons* is the *Over-Vert*, *Nether-Vert* and *Special Vert*, that are not in the King's Woods; and by the *Aſſiſes and Cuſtoms of the Foreſt*, *cap.* 1. 'If any Foreſter 'ſhall find any Man attachable for *Vert* in the 'Foreſt, firſt he ſhall attach him by two 'Pledges, if they be to be found; if not, he 'ſhall be brought to the next Town where 'they may be found; and if he be afterwards 'found, he ſhall attach him by four Pledges; 'and if the third Time, he ſhall be preſented 'before the Verderors, and be put by eight 'Pledges; and after the third Attachment, his 'Body ſhall be attached and retained, that he 'may remember what Thing *Vert* is.' *Manwood* 359, 407.

If any Man offend in cutting down *Vert* in the Foreſt, and dieth after it is preſented; yet the King ſhall be anſwered for this Treſpaſs, either by the Heirs of the Deceaſed, or by the

Tenant of his Land. *Aſſiſe Pickering, fo.* 22. *Manwood* 306.

Viſne. A *Viſne* may come from a Foreſt, and ſo it may from a Park, but not from a Walk in a Foreſt. *Hawk. P. C.* 2 *Book*, 183.

Vivary, Signifieth a Place in Land or Water, where living Things are kept; and moſt commonly in Law ſignifieth Park, Warren, Piſcary, *&c.* 2 *Inſt.* 100.

Walkers, Foreſt Officers appointed to walk about a certain Space of Ground committed to their Care.

Warden of the Foreſt. The *Chief Warden of a Foreſt* is an Officer of great Authority, and next to the Chief Juſtice in *Eyre*, in order to bail and diſcharge Offenders out of Cuſtody, who are impriſoned or indicted for Offences in the Foreſt; but he is not a judicial Officer, becauſe he may make a Deputy by the Foreſt Law; and where-ever there is a *Caſtle* in a Foreſt, the *Conſtable of that Caſtle* is always *Chief Warden*, as the Conſtable of *Windſor* Caſtle is always *Chief Warden* of that Foreſt. 4 *Inſt.* 313.

By **Stat.** 1 *Ed.* 3. *Stat.* 1. *c.* 1. 'If any 'Perſon is taken in the very Act, and impri-'ſoned or indicted for the *Vert* or *Veniſon*; the 'Chief *Warden* of the Foreſt ſhall let him to 'Mainpriſe until the Eyre, without taking any 'Thing for his Deliverance; which if he refuſe 'to do, then the Party grieved ſhall have a 'Writ out of the Chancery, of old ordained for 'Perſons indicted to be bailed till the Eyre; and

'that

'that if upon the Service of ſuch Writ, the 'Warden will not deliver the Perſon indicted 'to *Mainpriſe*, then he ſhall have another Writ 'out of the Chancery, directed to the Sheriff 'of the County, &c. to attach the *Warden* to 'anſwer his Default before the King at a cer-'tain Day; and then the Sheriff (having called 'the Verderors to him) ſhall deliver the Perſon 'indicted by good Mainpriſe, in the Preſence 'of the ſaid Verderors, and ſhall deliver the 'Names of the Mainpernors to the ſame Ver-'derors, to anſwer in the Eyre before the Juſ-'tices. And if the Chief Warden be thereof 'attainted, he ſhall be awarded to pay treble 'Damages to the Party grieved, and be com-'mitted to Priſon, and be ranſomed at the 'King's Will.'

'And from henceforth it ſhall be written to 'him as to the Chief *Warden of the Foreſt*, be-'cauſe he may not be Juſtice, nor have any 'Record but in the Eyre.'

If the *Warden* of the Foreſt die, and his Heir or Tertenant bring not in the Rolls, &c. his Heir or Tertenant ſhall anſwer for the ſame. 4 *Inſt.* 313.

Warrant. See **Hunting.**

Warren. A * Warren is a Franchiſe or Liberty by Grant of the King, or by Preſcription, for the Preſervation of Beaſts, and Fowls of *Warren* only. † Beaſts, as Hares, Conies, &c. Fowls, as Partridge, Pheaſant, Quail, Rail, Wood-cock; or Water-Fowl, as Mallard, Hern,

* *Manwood* 362, 363. † 1 *Inſt.* 233. *a.*

&c. * A Chaſe, Park or *Warren* are collateral Inheritances, and not iſſuing out of the Soil as Common doth. † A Free *Warren* may lie open, there being no Neceſſity of incloſing it; and one may have a *Warren* in another's Land; for the Grantee may alien the Land and reſerve the Franchiſe. ‡ But no one can make a *Warren* appropriate thoſe Creatures that are *feræ Naturæ*, without the King's Licence.

Note; An Ejectment doth not lie of a Warren. 1 *Keb.* 506.

By **Stat.** 9 *Geo.* 1 *c.* 22. *ſ.* 1 'If any Perſon, 'armed and diſguiſed, ſhall appear in any '*Warren*, or Place where Hares are uſually 'kept, or unlawfully rob any ſuch *Warren*; 'or (*whether armed or diſguiſed or not*) ſhall 'reſcue any Perſon in Cuſtody for either of the 'ſaid Offences, or procure any to join with him 'in ſuch unlawful Act; ſhall be guilty of Felony 'without Benefit of Clergy.'

A Warrant for unlawfully entering any *Warren*. [22 & 23 *Car.* 2. *c.* 25. Vide Tit. *Hares*].

Somerſet, } WHereas *an Information is laid*
to wit. } *before me, (being one of his Majeſty's Juſtices of Peace for this County) by* W. L. *of*, &c. *Warrener, that* J. D. *of*, &c. *did wrongfully enter into his* Warren *or Ground, law-*

* 4 *Inſt.* 318. † *Wood's Inſt.* 208. ‡ 2 *Inſt.* 199. 11 *Rep.* 87.

fully

fully used or kept for Breeding or Keeping of Conies, and did then and there chase, take or kill Conies, against the Will of the Owner or Occupier thereof, not having any Title or lawful Authority so to do: These are therefore to require you, on Sight hereof, to bring the said J. D. *before me, to shew Cause why the Penalty of the Act of Parliament should not be levied on him for his Offence.* Given, *&c.*

A Warrant to levy the Penalty.

To the Constable of, *&c.* and to the Keeper of, *&c.*

Somerset, to wit. } *Whereas* J. D. *of*, &c. *is lawfully convicted before me, (being one of his Majesty's Justices of the Peace for this County) by the Oath of one Witness, of his wrongfully entering into the* Warren *of* W. L. *lying in the Parish of* S. *in this County, on*, &c. *and then and there did chase, take or kill Conies, against the Will of the said Owner or Occupier thereof, the said* J. D. *not having Title or lawful Authority so to do: Therefore I do hereby order, that the said* J. D. *shall presently pay to the said* W. L. *the Sum of*, &c. *being treble Costs and Damages: And you are hereby required to convey the said* J. D. *to the Gaol at*, &c. *for the said County, and deliver him to the Keeper thereof: And you the said Keeper are hereby commanded to keep him the said* J. D. *in safe Custody for the Space of three Months.* Given, *&c.*

Law Caſes.

Where a Man is ſeiſed of a Manor, in which he had a *Warren*, and made a Feoffment of the ſaid Manor *cum pertinentiis*; it was held, that the *Warren* did not paſs, becauſe 'tis a collateral Inheritance, and doth not iſſue out of the Soil; but this Caſe is denied to be Law, for it hath been ſince adjudged, that by a Grant of a Manor *cum pertinentiis*, the *Warren* will paſs. *Bro. Abr.* Tit. *Warren.* 4 *Inſt.* 318.

T. S. had a *Warren* in another Man's Land, and afterwards he granted the ſaid *Warren* to *E. G.* Adjudged, *that by the Grant of the* Warren *the Soil did not paſs*, probably for the Reaſon mentioned in the laſt Caſe, *(viz.)* becauſe a *Warren* is a collateral Inheritance, and doth not iſſue out of the Soil. 3 *Bulſt.* 82. *Cro. Eliz.* 547. S. C.

So where one Man was Lord of the Manor of *H.* in which Manor another Man had a *Warren* belonging to the Manor of *D.* and afterwards both theſe Manors came into one Hand, by the Purchaſe of the Manor of *D.* Adjudged, that by the Union of the Land and the *Warren*, that the *Warren* was not extinct but ſtill remained. Lord *Mounſon*'s Caſe, *Cro. Car.* 4 *Inſt.* 318. So adjudged in the Caſe of a *Chaſe*.

If a Man ſprings a Pheaſant on his own Land, and his Hawk flies at it, and purſues it into the *Warren* of *T. S.* the Owner of the Hawk cannot juſtify the Entry into the *Warren*, and taking both the Hawk and Pheaſant; but 'tis otherwiſe

if

if the Soil was not a *Warren*. 2 *Roll. Abr.* 567.

Sir *Richard Harriſon* claimed a *Warren* by Preſcription in *Windſor* Foreſt, and the Attorney General *Noy*, at a Juſtice-Seat held for the Foreſt, affirmed that the Claim was not good, unleſs it had been *allowed in Eyre*; and therefore he being preſented for the *Warren* was fined 10 *s.* and it was ordered that the *Warren* ſhould be deſtroyed. Sir *Rich. Harriſon*'s Caſe, *W. Jones*'s Rep. 280. Vide Tit. **Comes**.

Waſte, Signifies a Spoil and Deſtruction in the Covert and Paſtures of the Foreſt.

If a Man on his own Inheritance fell or cut down any Wood, which grows ſcattering, or any thick Covert in the Foreſt without Licence of the Chief Juſtice in *Eyre* or View of the Foreſters, 'tis *Waſte*. *Manwood* 366.

There is a Difference between *Deſtruction* and *Waſte* in a Foreſt; for every *Deſtruction* of the Covert is *Waſte*, and perpetually ſo; but every *Waſte* is not *Deſtruction*; for a Man may fell his Woods and deſtroy the Covert for a Time, and by preſerving the Fences, the ſame may be Covert again. *Ibid.* 366.

If a Man hath a Licence to fell Woods which are Coverts in a Foreſt, and he felleth them, but doth not make Fences to preſerve the Sprouts, ſo that they are eaten and deſtroyed by the Cattle, that they never grow again, this is *Waſte* and *Deſtruction*; and ſo it is if he fell them at unſeaſonable Times and they die. *Ibid* 367.

He who commits *Waſte*, either by felling Trees or deſtroying any Covert or Wood, is

to be fined by the Chief Juſtice in *Eyre*, and the whole Wood or Place ſo *waſted* ſhall be ſeized to the Uſe of the King; and ſo it ſhall remain till the Owner hath paid the Fine; and if the Offender dies before any Preſentment be made of the Offence, yet the Heir ſhall be fined, and the Land ſeized till he pays the Fine; and the like Law is when the *Waſte* is done by plowing any Meadow. *Anno* 8 *Ed.* 3. *Aſſiſe Pickering*, *fo.* 22. *Manwood* 368.

The Fine in theſe Caſes is neither certain nor altogether arbitrary, becauſe the Number of Acres contained in the Place *waſted* is mentioned in the Indictment or Preſentment, and uſually the Chief Juſtice in *Eyre* doth aſſeſs the Fine according to the Number of thoſe Acres; and not only according to the Number, but the Value of ſuch Acres *waſted* is likewiſe ſet forth in the Indictment; in which Indictment theſe Things are ſpecially to be conſidered. 1. Who made the *Waſte*. 2. What Manner of *Waſte* is done. 3. When it was done. 4. Where the Ground is, in which it was done. 5. In whoſe Tenure it was at that Time. 6. What Number of Acres it doth contain. 7. What every Acre is worth to be ſold. 8. Whether it be *Waſte* or *Deſtruction*, or both. 9. In whoſe Fee it is, and in what Pariſh. 10. Whoſe Inheritance it is. *Manwood* 369.

If the King pardons Tranſgreſſions in a Foreſt, this doth not pardon the *Waſte*. Sir *Walter Tichburne*'s Caſe, *Iter Windſor*. *W. Jones's Rep.* 279.

Wear. By **Stat.** 11 *Hen.* 7. *cap.* 5. 'Every 'Man may pull down the *Wears* and Engines 'in the Haven of *Southampton*, between *Calſhord* 'and *Redbridge*; and whoſoever levieth any 'other there ſhall forfeit 100 *l.* to the King. 'Vide *Table.*'

Wild-Duck, &c. By **Stat.** 9 *Ann. c.* 25. ſ. 4. 'If any Perſon whatſoever between 1 *July* 'and 1 *September* * in any Year, ſhall by Hays, 'Tunnels or other Nets, drive and take any '*Wild-Duck*, Teal, Widgeon or any other 'Fowl, commonly called Water-Fowl, in any 'Place of Reſort for Wild-Fowl, in the Moulting Seaſon, the Offender being convicted thereof before one Juſtice of the Peace for the County where the Offence ſhall be committed, 'and by the Oath of one credible Witneſs, 'he ſhall forfeit 5 *s.* for every ſuch Fowl, one 'Moiety to the Informer, the other to the Poor 'of the Pariſh where the Offence was done, to 'be levied by a Warrant of the Juſtice before 'whom the Offender was convicted, by Sale 'and Diſtreſs of his Goods, rendering the Overplus above the Penalty and Charges of Diſtreſs; and for Want of Diſtreſs, to be committed to the Houſe of Correction for any 'Time not exceeding one Month, nor leſs than 'fourteen Days, there to be whipt and kept to 'hard Labour; and the Juſtice ſhall cauſe ſuch 'Hays and Nets to be ſeized and immediately 'to be deſtroyed in his Preſence.'

* See *Stat.* 10 *Geo.* 2. *c.* 32. *p.*

But the ſaid Act of 9 *Ann.* being found by Experience to be ineffectual, by Reaſon that the Wild-Fowl have not done moulting by the firſt of *September*, ſo that great Numbers were yearly deſtroyed, contrary to the Meaning of the ſaid Act; therefore,

By **Stat.** 10 *Geo.* 2. *c.* 32. 'If any Perſon 'ſhall in any Year between 1 *July* and 1 *October*, 'by Hays, *&c.* or other Nets, drive and 'take any *Wild-Duck*, Teal, Widgeon, or any 'other Water-Fowl in any Marſhes, Fens, or 'other Places of Reſort for Wild-Fowl, and 'ſhall be thereof convicted in ſuch Manner as 'in the ſaid Act 9 *Annæ* is preſcribed, ſhall be 'liable to the ſame Penalties and Puniſhment as 'by the ſaid Act is directed.'

Winter-Heyning, A Seaſon which is excepted from the Liberty of Commoning in the Foreſt of *Dean.*

Wood. By **Stat.** 1 *Ed.* 3. *c.* 2. 'Every 'Man having * *Woods* in the Foreſt might take 'Houſe-bote and Hay-bote in his *Woods*, (which 'he had in the old Foreſts) without being at-'tached for the ſame by the Officers of the Fo-'reſt, ſo that it be done by the *View of the Fo-'reſters.*'

By **Stat.** 22 *Ed.* 4. *c.* 7. 'Where a Man 'hath *Woods* in his own Ground within the old

* 'Tis neceſſary that there ſhould be *Woods* in every Foreſt, as well to ſhelter as at ſome Times to feed the Deer; and where the Trees grow ſcattering and at ſuch a Diſtance that they do not touch one another, ſuch Places are properly called *Woods.* See Covert.

'Foreſts, and ſhall cut them down by the 'King's Licence where the *Foreſt Purlieu* or 'Chaſe belongs to the King, or without Licence 'where they belong to the Subject, he may 'incloſe the Soil for ſeven Years next after ſuch 'cutting down.'

Law Caſes.

A Seizure being made of the Lord *Lovelace's Wood*, for a Fine of 13 *s.* 4 *d.* the ſame was ſtaid at the Juſtice-Seat; but his Claim of a Privilege to fell *Wood* in the Foreſt, without Licence or View of the Foreſters, was not allowed; though in 4 *Inſt.* 298. a *Preſcription* to fell and ſell *Wood* without View was held good; but at a Juſtice-Seat held for the Foreſt of *Windſor*, that was held to be no Law. *W. Jones*'s Rep. 270.

For in *Whitlock*'s Caſe it was held at a Juſtice-Seat, that a Man may fell *Woods* in a Foreſt for the Fire or other neceſſary Boots, by the View of the Foreſters or Verderors, but not to *ſell* without the Writ *Ad quod damnum*; and that if a Foreſter takes any Thing for his Viewing, 'tis Extortion. *Whitlock*'s Caſe, *W. Jones* 268, 277.

It was agreed at the ſaid Juſtice-Seat, that the Chief Warden of the Foreſt could not grant a Licence to fell *Trees* there; nor the Chief Juſtice in Eyre, unleſs 'tis granted *ſedente Curia*, or after a Writ *Ad quod damnum*. *W. Jones*'s Rep. 277.

The Defendant was preſented for felling *Timber-Trees* in *Windſor Foreſt*; and thereupon he at the Juſtice-Seat produced the King's Warrant in theſe Words, *(viz.) Whereas* Bagſhot *Rails are in Decay, therefore he* (the Defendant) *ſhould cauſe as much Timber to be felled, as would be convenient for the Repairs thereof*; and this was held to be no good Warrant, becauſe the Decay of the Rails ought firſt to be *viewed*, and an Eſtimate to be made thereof; and then ſuch a Warrant might be granted, but not before. Sir *Charles Howard*'s Caſe, *W. Jones.*

At the ſame Juſtice-Seat it was held, that a *Preſentment* made by all the Officers of the Foreſt, that *Wood* and *Timber* was felled there, and by whom, is ſufficient Evidence to convict the Offender. *W. Jones* 268.

The Inhabitants of *Egham*, and of all the Towns in *Surrey* within *Windſor Foreſt* joined in a Claim to cut down their *Coppices* at Pleaſure; and *Noy* the Attorney General inſiſted at a Juſtice-Seat, that ſince the Charter of the Foreſt was made, a *Preſcription* to cut down *Wood* there is not good; for by that Charter it was granted, that all Freeholders ſhould have their *Woods* in Foreſts, as they had them at the Time of the *Coronation of H.* 1. which was above 120 Years before that Charter was granted; nay, a Preſcription to cut down *Wood* by the View of the Foreſters and Verderors is not good, for it muſt be *per Viſum & allocationem, &c.* becauſe if 'tis *per Viſum* only, then if a Foreſter or Verderor is required

required to view it, and he refuſeth, it may be cut down without View. *W. Jones* 275.

An *Under-Keeper* being preſented at the ſaid Juſtice-Seat for cutting *unlawful Brouſe-Wood*, ſaid in his Defence, that he cut it by the *King's Order to ſell*, and with the Money to buy *Hay* for the Deer in hard Weather. The Attorney General ſaid, that the King's Commands ought to be obeyed; but that there is a legal Way to put them in Execution. *Rowland Repley*'s Caſe, *W. Jones* 279.

So where one was preſented for *felling and carrying away ſeven Timber-Trees*; he inſiſted at a Juſtice-Seat, that thoſe *Trees* were cut down to repair a *Bridge* which the King ought to repair, and that the Lops were ſold to pay the Workmen with the Money ariſing by ſuch Sale. And though the Verderors affirmed, that the *Timber* was imployed as aforeſaid, yet he was fined 5 *s.* for his undue Taking the *Trees*. *Clifton*'s Caſe, *W. Jones* 279.

Though a Man may cut down his own *Woods* in a Foreſt for neceſſary Boots, without View of the Foreſters or Verderors; yet ſome Officer of the Foreſt ought to preſent it at the next *Court of Attachments*, and how much was felled, and that they had ſeen it, that it may appear on Record what Quantity was cut down. *W. Jones* 295. See the *Table*.

Wood-cock, Is a Fowl of Warren. 1 *Inſt.* 233. *a.*

Wood-Geld, Is taken to be the Gathering or Cutting of Wood within the Foreſt; or it ſignifies to be free from Payment of Money for taking Wood

Wood in any Foreſt. *Cromp. Juriſ.* 157. *Co. Lit.* 233.

Wood-mote, Is the old Name of that Court of the Foreſt, now called the *Court of Attachments.*

Wood-Plea-Court, A Court held twice a Year in the Foreſt of *Clun* in *Shropſhire*, for determining all Matters of Wood and Agiſtments. *Jac. Law Dict.* ſub Tit.

Woodward, Is an Officer of the Foreſt whoſe Charge is to look after the Woods and Vert there; his very Name denotes his Office; he muſt preſent all Offences within his Charge at the Court of *Attachments* or *Swainmote*, to the Chief Foreſters or Verderors; and if he ſee or know any Malefactors, or if he find any Deer killed or hurt, he muſt acquaint a Verderor therewith, and preſent the ſame at the next Court of the Foreſt, and in theſe Particulars his Oath doth conſiſt; but he cannot make any Attachments; and by the Law he muſt not walk with Bow and Arrows, but with a Foreſt-Bill or Hatchet. *Manwood* 389, 390, 409.

Sed. Q. If he may not attach Malefactors, for it may be impoſſible for him to preſent them to the Chief Foreſter, becauſe they may be gone before he finds the Foreſter. And indeed the 11th *Artic.* of the Aſſiſes of the Foreſt ſeems to clear this, for it is there ſaid, ‘ *Si quis viderit aliquos* ‘ *Malefactores infra Metas Foreſtæ aliquam feram* ‘ *capere vel aſportare, debet illos capere ſecundum* ‘ *poſſe ſuum*;’ which Words, ‘ *Si quis viderit* ‘ *Malefactores, &c.* being general, extend (as I apprehend)

apprehend) to *Woodwards* as well as all other Miniſters of the Foreſt.

The *Woodward* ought to appear at every Juſtice-Seat, and when he is called he muſt preſent his Hatchet to the Lord Chief Juſtice in Eyre.

Where the King hath a Wood in his own Land in a Foreſt, and *leaſeth* the ſame to another, the Leſſee ought to provide a *Woodward*; and if he doth not appear at the Courts of the Foreſt, the Wood ſhall be ſeized, and alſo the Office of the *Woodward*; the Law is the ſame where a Subject has a Wood in a Foreſt. *W. Jones* 278.

THE INDEX.

A.

Arch-

B.

D.

Warrant

A Warrant

E.

F.

The

G.

The

H.

I.

Indictment.

K.

L.

M.

N.

O.

P.

Pro-

Q.

R.

S.

Assises

T.

V.

——Againſt

FINIS.